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SUPERFUND AMENDMENTS OF 1985

NOVEMBER 12, 1985.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HOWARD, from the Committee on Public Works and Transportation, submitted the following

REPORT

together with

ADDITIONAL, DISSENTING, AND SUPPLEMENTAL VIEWS

[To accompany H.R. 2817 which was divided and referred to the Committee on Energy and Commerce, the Committee on Public Works and Transportation, and the Committee on Ways and Means]

[Including cost estimate of the Congressional Budget Office]

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 2817) to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in boldface roman type in the reported bill.

INTRODUCTION

Hazardous waste contamination of the Nation's ground and surface water resources has become perhaps the most significant and troublesome water quality problem facing the country for the remainder of this century. With the ability to render vast quantities of water unfit for use without treatment, toxins that leach and flow thousands of active and abandoned waste sites all across the Nation pose costly and often controversial cleanup and public health problems for government officials at all levels.

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During the late 1970s, Federal laws then in existence were found to be inadequate for dealing with the problem of abandoned toxic waste sites such as "Love Canal" in Niagara Falls, New York and the "Valley of the Drums" in Brooks, Kentucky. Special funds in other statutes were simply inadequate for meeting the large costs of cleaning up the thousands of often buried and corroding drums of toxic wastes found at these sites, and so were the laws that would have allowed regulators to hold those responsible for these toxic dumps—the generators, transporters and waste site operators—for the costs of cleaning them up.

On December 11, 1980, the Congress responded to these inadequacies in the Federal laws by enacting the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980" (P.L. 96-510), commonly referred to as the "Superfund" law.

That Act created a $1.6 billion trust fund to be used for cleaning up hazardous waste sites and spills of hazardous chemicals. The monies for the Fund, the be collected over a five-year period commencing in 1981, were to be derived primarily from taxes on oil and certain chemicals. This tax has been referred to as the feedstock tax since the chemicals consist primarily of the basic chemical building blocks of industry. In addition, 12.5 percent of the Fund's monies were to come from general tax revenues.

Superfund incorporated under one Federal law a program for responding to releases of hazardous substances into the environment from uncontrolled waste sites. The law requires the Administrator of the Environmental Protection Agency (EPA) to designate what would be a hazardous substance and at what level a release of those substances must be reported. If a release occurs, the Administrator of EPA is authorized to respond to that release, and to secure abatement actions when there may be an immiment and substantial endangerment to public health or walfare of the environment.

Section 107 of the law defines the liability of responsible parties for costs and damages. Essentially, those repsonsible for creating the threat or actual incidence of hazardous waste contamination, including those who generate, transport, treat, store, or dispose of hazardous wastes, who do not act to clean up a site themselves, are required to reimburse the government for clean costs and for any damage to natural resources that results as well.

The liability for releases of hazardous substances has been determined to be strict, joint and several. That is, parties may be responsible for costs and damages without any evidence of fault on their part but merely by their status. In addition, all parties can be found to be liable together for the full amount of costs and damages, or any one party can be liable for the full amount of costs and damages. If the election is made to hold fewer than all parties responsible for costs and damages, no more than full recovery may be had.

Superfund also requires the Administrator of EPA to prepare a National contingency Plan (NCP) for the removal of hazardous substances. Included in the NCP is a National Priorities List (NPL) of sites eligible for Superfund-financed cleanups.

EPA has currently idenified approximately 22,000 sites as potentially eligible for Superfund-financed cleanup. Of these sites, preliminary assessments which seek to identify the hazrdous substance involved and potentially responsible parties have been conducted at approximately 14,500 sites. After the preliminary assessment, as more detailed site inspection is conducted. The data of the site inspection are evaluated in accordance to the Hazard Ranking System, and those sites above a certain score are placed on the NPL.

Once a site has been placed on the NPL, a Remedial Investigation and a Feasibility Study is conducted for the site. This results in options for what remedial actions are to be taken at the site. The proposed actions are to include various methods of treating, controlling, or eliminating the release. The remedy selected must, to the extent practicable, be in accordance with the NCP, be cost effective, and provide a balance between the need for cleanup at the present facility and the need for cleanup at other facilities.

Unfortunately, the first few years of the Superfund program were characterized by delays and mismanagement. An examination of the Environmental Protection Agency's efforts to carry out the Superfund law by the Committee on Public Works and Transportation's Subcommittee on Investigations and Oversight during 1982 and 1983 led to disclosures that the program's managers had adopted policies more oriented towards conserving monies in the Fund rather than spending them to clean up the thousands of abandoned toxic waste dumps around the country.

During the course of the Subcommittee's investigation, the EPA Administrator was cited by Congress for contempt and resigned in March of 1983. Shortly thereafter, approximately 20 other senior agency officials were either fired or resigned. Their successors moved swiftly to make a number of changes in the policies, practices and procedures for managing the Superfund program, and cleanup efforts around the Nation began to proceed more expeditiously.

As of September of this year, 452 emergency "removal" actions, the purpose of which is to eliminate any immediate hazards to the public's health and/or the environment, had been taken, and some 392 detailed technical studies, necessary for the design of final cleanup plans, had been initiated. Many of these latter efforts have been completed and actual cleanup has been initiated at 119 waste sites. Despite this record, overall progress in remedying the abandoned toxic waste site problem that so threatens the public's health and the Nation's water resources can only be called disappointing.

To date, only 4 toxic waste sites, according to EPA officials, have been fully cleaned up. Two others, the "Butler Tunnel" in Pittston, Pennsylvania, and an abandoned chemical plant and its dump site in Baltimore, Maryland, are claimed to have been cleaned up by EPA. But recent disclosures about pollutants still present at these sites suggest that the remedial measures taken may have been inadequate.

Indeed, what was initially thought to be a relatively manageable problem, with only a few hundred sites to be addressed, has mushroomed in size. As of mid-September 1985, a total of 850 sites had been approved or proposed for inclusion on the National Priority List of toxic waste sites called for by the law. EPA has estimated that the number of sites on this list will eventually exceed two thousand, and the cost of cleaning them up may be as much as $22.7 billion. And even these projections may be overly conservative.

The Congressional Office of Technology Assessment (OTA) has estimated that as many as ten thousand sites may have to be addressed by the Superfund program, with attendant cleanup costs of about $100 billion. No matter which estimate is correct, virtually everyone now acknowledges that efforts to "fully" clean up most sites, including the contaminated groundwaters that often underlie them, will take not years, but decades.

In effect, while the 1980 "Superfund" law significantly advanced the Federal government's ability to respond to the emerging problem of abandoned toxic waste sites, it nonetheless has proven to be in need of amendment, not only for the purpose of expanding and continuing the law's cleanup trust fund, but for addressing other factors that have also had a significant impact on the nature and rate of toxic site cleanups.

H.R. 2817, as reported, contains provisions relating to the Occupational Safety and Health Act, which is within the jurisdiction of the Committee on Education and Labor. Pursuant to a request from the Honorable Augustus F. Hawkins, Chairman of that Committee, and the Honorable Joseph M. Gaydos, Chairman of the Subcommittee on Health and Safety, the following exchange of letters is included in the report.

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
HOUSE OF REPRESENTATIVES,
Washington, DC, October 8, 1985.

Hon. AUGUSTUS F. HAWKINS,
Chairman, Committee on Education and Labor, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I have your letter of October 3, 1985, with reference to certain provisions of H.R. 2817, amendments to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (Superfund).

I agree with you that these particular provisions dealing with the Occupational Safety and Health Act are under the jurisdiction of the Committee on Education and Labor.

This is to advise you per your request, the Committee will insert in our Committee report a copy of your letter of October 3, 1985.

Sincerely,

JAMES J. HOWARD, *Chairman.*

COMMITTEE ON EDUCATION AND LABOR,
Washington, DC, October 3, 1985.

Hon. JAMES J. HOWARD,
Chairman, Committee on Public Works and Transportation, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: We are writing to express our concern with certain provisions in H.R. 2817, amendments to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (Superfund), which is now pending before your Committee. These provisions amend the Occupational Safety and Health Act so as to protect the health and safety of employees engaged in hazardous waste operations.

Though we are not substantively opposed to your Committee's inclusions of these provisions, we must insist that your Committee recognize that since the Occupational Safety and Health Act is within the exclusive jurisdiction of the Committee on Education and Labor, that the above described provisions thereby fall exclusively within our Committee's jurisdiction.

In order to preserve and protect this jurisdiction, we respectfully request that you insert a copy of this letter in your Committee Report on H.R. 2817, acknowledging that we continue to have such jurisdiction. Otherwise, it will be necessary for us to demand a sequential referral of H.R. 2817 or any other bill which contains the same or similar language.

Copies of this letter are being delivered to the Speaker and the Parliamentarian to insure their knowledge of our concern with this legislation.

With best wishes,

Sincerely yours,

AUGUSTUS F. HAWKINS,
Chairman, Committee on Education and Labor.
JOSEPH M. GAYDOS,
Chairman, Subcommittee on Health and Safety.

SECTION-BY-SECTION ANALYSIS

SECTION 1—SHORT TITLE AND TABLE OF CONTENTS

This section provides that the bill may be cited as the Superfund Amendments of 1985 and contains a table of contents for the bill.

SECTION 2—CERCLA

This section provides that the term CERCLA refers to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq*).

Title I—Provisions Relating Primarily to Response and Liability

SECTION 101—AMENDMENTS TO CERCLA DEFINITIONS

Under existing law, the primary responsibilities for cleanup and enforcement are vested in the President. Most of these have been delegated to the Adminstrator of the Environmental Protection Agency, and some to other agencies. Section 101 substitutes "Administrator" for "President" in recognition of the delegations which have been made to EPA, and also preserves any delegations made to other Federal agencies prior to enactment of the bill. However, any authority delegated to a department or agency as it relates to facilities owned by that department or agency is vested in EPA in view of the provisions in the bill making Federal facilities subject to the requirements of CERCLA.

Subsection (b) of section 101 expands the definition of release to include the abandonment or discarding of barrels, containers, and other closed receptacles containing hazardous substances or pollutants or contaminants.

Subsection (c) amends the definition of remedy to remove the present statutory bias against offsite remedies.

Section 101(24) of CERCLA, which defines a remedial action, provides that it does not include offsite transport of hazardous substances, or the storage, treatment or destruction of these substances unless the President determines that such actions are more cost-effective than other remedial actions, will create new capacity for the management of solid wastes, or are necessary to protect public health or the environment.

Subsection (c) deletes these conditions and replaces them with the provision that remedial action includes offsite transport and offsite storage, treatment, destruction or secure disposition. With the removal of the present bias against offsite remedies, EPA will have more flexibility in determining the most effective methods for dealing with a release or threatened release of a hazardous substance.

Subsection (d) amends the definition of what constitutes a response to include related enforcement activities, thereby permitting recovery of those costs.

Subsection (e) adds the definition of pollutants or contaminants, which presently is limited to section 104 of the Act, to the definitions in section 101 which apply to the entire Act. This is a clarifying amendment to ensure that the phrase "pollutants or contaminants," which appears in sections of the Act other than section 104, is interpreted and applied in a consistent manner.

SECTION 102—REPORTABLE QUANTITIES

Section 102 of CERCLA directs the Administrator of EPA to promulgate regulations, with no deadline stated, designating those hazardous substances which may present substantial danger to the public health or the environment, and establishing the quantity of any hazardous substance which must be reported if released into the environment.

These regulations have not yet been promulgated. Section 102 of the bill therefore directs the Administrator to promulgate these regulations for all hazardous substances by December 31, 1986.

SECTION 103—NOTICES; PENALTIES

This amendment is a technical change to this section clarifying the intent of current law to apply the penalties for failure to file notifications of hazardous substance releases to persons in charge of vessels as well as facilities.

SECTION 104—RESPONSE AUTHORITIES

Section 104 of CERCLA describes the response authorities, including both removal and remedial actions, which may be undertaken pursuant to the Act. Whenever any hazardous substance is released into the environment or there is a substantial threat of such a release, or there is a release or substantial threat of release into the environment of any pollutant or contaminant, the President is authorized to remove and provide for remedial action relating to hazardous substances, pollutants or contaminants, consistent with the National Contingency Plan. The President is authorized to undertake investigations, monitoring, surveys, testing and other information gathering as he may deem necessary to identify the existence and extent of releases or threatened releases, and the extent of danger to the public health or welfare or to the environment. The President is also authorized to undertake planning, legal, fiscal, economic, engineering, architectural and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs of such actions and to enforce the provisions of the Act.

Obligations from the Fund cannot continue, except for information gathering and investigations, after $1 million has been obligated for response actions or six months has elapsed from the date of initial response to a release or threatened release of a hazardous substance unless a number of conditions are met. For the response activity to continue, the President must find that continued response actions are immediately required to prevent, limit or mitigate an emergency; there is an immediate risk to public health or welfare or the environment; and assistance will not otherwise be provided on a timely basis. The obligations may also continue if the President has determined what the appropriate remedial actions should be and the state or states in which the source of the release is located have entered into a contract or cooperative agreement providing that the state will assure all future maintenance of the removal and remedial actions for the expected life of the actions, the state will assure the availability of a hazardous waste disposal facility acceptable to the President for any necessary offsite activities, and the state will pay or assure payment of 10 percent of the costs of the remedial action, or at least 50 percent or such greater amount as the President may determine appropriate, of sums expended in response to a release at a facility that was owned by the state at the time of any disposal of hazardous substances.

Section 104 of CERCLA also authorizes the President to enter into contracts or cooperative agreements with states or political subdivisions providing that they will take response actions and be reimbursed from the Fund.

Persons who store, treat or dispose of, or who generate, transport or otherwise handle hazardous substances, must, upon request, furnish information relating to the substance and permit access to records relating to the substance. Officers, employees or representatives of the President are authorized to enter any establishment at reasonable times and inspect and obtain samples from any person of any hazardous substance.

Section 104 of H.R. 2817, as reported, amends existing section 104 of CERCLA in a number of respects in order to improve the effectiveness of response actions undertaken pursuant to the Act.

Subsection (a) of the bill requires that in conducting response actions under CERCLA the Administrator is to give primary attention to those releases which he deems may present a public health threat.

Subsection (b) clarifies the Administrator's authority to determine when private parties should be authorized to conduct cleanup activities.

Paragraph 104(a)(1) of CERCLA provides that the President is authorized to undertake response actions unless the President determines that such removal and remedial actions will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates or by any other responsible party. Subsection 104(b) of the bill changes this to provide that when the Administrator determines that removal and remedial actions will be done properly and promptly by the owner or operator of a vessel or facility from which the release emanates or by any other responsible party, the Administrator shall require such owner or operator or party to carry out the removal or remedial action. This is intended to clarify the authority of the Administrator to permit response actions to be carried out by owners or operators of vessels or facilities from which the release or threat of release emanates. The intent is to encourage response actions by owners or operators where the Administrator of EPA determines that they can perform the actions properly and promptly. The amended language does not require EPA to permit response actions by responsible parties. It is designed to clarify EPA's discretion by deleting the requirement that EPA undertake a response action unless a determination is made that it can be done by others. Deletion of current CERCLA's "unless" clause is intended to clarify current law and assure that responsible parties do not attempt to enjoin fund-financed cleanup on the grounds that they should be entitled to do the work, regardless of EPA's desires on the matter. Subsection (b) also provides that in no event shall the Administrator permit the owner or operator or any other responsible party to conduct a remedial investigation to determine the nature and extent of the problem presented by the release or threat of release or a feasibility study of alternatives to remedy the problems presented by the release or threat of release.

Subsection (c) of section 104 provides that any removal action undertaken by the Administrator under subsection 104(a) of CERCLA must contribute to the efficient performance of any long-term remedial action to the maximum extent practicable with respect to the release or threatened release concerned. The purpose of this amendment is to discourage short-term removal actions which are not consistent with long-term remedial actions and therefore result in a higher ultimate cost with respect to remedial actions undertaken at a site. It is not intended, however, to limit EPA's authority under new section 120 to provide interim measures to protect human health and the environment, not to limit emergency removal actions or removal actions necessary to determine what response actions are appropriate.

Subsection (d) amends paragraph (c)(1) of section 104 of CERCLA which limits obligations from the Fund to those not exceeding $1 million or six months. The new limitations are $2 million and 12 months. The amendment also adds the provision that a state pay 50 percent of the cost of response actions at a facility that was both owned and operated by the state at the time of any disposal of hazardous substances. In addition, the amendment requires that beginning three years after enactment a state must assure the availability of hazardous waste treatment or disposal facilities which are within the state or outside the state in accordance with an interstate agreement or a regional agreement or authority; are acceptable to the Administrator; are in compliance with the requirements of the Solid Waste Disposal Act; and have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the state during the 20-year period following the date of the cooperative agreement with the state. This amendment is designed to ensure the continued effectiveness of response actions to be taken over an extended period within a state insofar as response activities paid for out of the Fund are concerned.

Subsection (f) of section 104 amends subsection 104(c) of CERCLA with regard to state credits for cleanup activities. Section 104(c) of CERCLA provides that the President shall grant a state a credit against the share of the costs for which the state is responsible for any documented, direct out-of-pocket, non-Federal funds expended or obligated by the state or a political subdivision after January 1, 1978 and before the date of enactment of Superfund in 1980, for cost eligible response actions and claims for damages. In no event, however, can the amount of the credit granted exceed the total response costs relating to the release in question.

In addition, subsection (f) of section 104 of the bill amends section 104 by adding a number of new provisions with regard to state credits.

The new provisions require the Administrator of EPA to grant a state a credit against the share of the costs for which it is responsible (future maintenance of removal and remedial actions, availability of hazardous waste disposal facilities, payment of 10 percent of the costs of remedial actions and 50 percent of those costs with regard to sites owned and operated by states) with respect to a facility listed on the National Priorities List. The credit is for amounts expended by a state for a remedial action at such a facility pursuant to a contract or cooperative agreement with the Administrator of EPA. The credit is limited to those state expenses which the Administrator determines to be reasonable, documented, direct out-of-pocket expenditures of non-Federal funds.

The credit includes expenses for remedial actions at a facility incurred before that facility was listed on the National Priorities List, or before a contract or cooperative agreement is entered into between the Administrator and the state for a facility, if the facility is later listed on the National Priorities List and a cooperative agreement or contract is entered into between EPA and the state for that facility. The Administrator of EPA must determine that these expenses would have been credited to the state if the expenditures had been made after the facility was listed on the National Priorities List and after the date on which the contract or cooperative agreement was entered into.

The state credit includes amounts expended or obligated by the state or a political subdivision of the state for administration of CERCLA. The credit also includes funds expended or obligated by a state or a political subdivision after January 1, 1978, and before December 11, 1980, for cost eligible response actions and claims for damages compensable under section 111 of CERCLA, (items which are authorized to be paid for by the Fund).

The state credit is to include 90 percent of state expenses incurred at a facility owned, but not operated by, a state or by a political subdivision. This credit only applies to expenses incurred pursuant to a contract or cooperative agreement between the state and EPA and only to expenses incurred after December 11, 1980, but before the date of enactment of H.R. 2817. In the case of expenditures made after the date of enactment, the Administrator may require prior approval of each item of expenditure as a condition of granting a credit. Credits granted for funds expended with respect to a facility may be used by the state to reduce all or part of the share of costs otherwise required to be paid by the state in connection with remedial actions and future maintenance thereof at a facility. If the amount of funds for which credit is allowed exceeds the state's share of costs for a particular facility, the state may use the amount of the excess to reduce all or part of the share of costs at other facilities in the state. A credit does not entitle the state to any direct payment.

Subsection (g) requires that remedial actions be selected in accordance with the new cleanup standards section which has been added to CERCLA by section 121 of the bill.

Subsection (h) provides that in the case of ground or surface water contamination, completed remedial action includes the completion of measures necessary to restore ground and surface water quality. This is designed to ensure that ground or surface water cleanup will be completed as part of the remedial action, and not be left to operation and maintenance activities which must be funded by a state.

Subsection 104(i) of the bill provides that a state or political subdivision of a state may apply to the Administrator of EPA to carry out actions authorized in section 104 (response actions). If the Administrator determines that the state or political subdivision has the capability to carry out response actions in accordance with the criteria and the priorities established pursuant to the National Contingency Plan, and to carry out related enforcement actions, the Administrator may enter into a contract or cooperative agreement with the state or political subdivision to carry out such actions. The Administrator must make a determination regarding such an application within ninety days after the receipt of the application. A contract or cooperative agreement is to be subject to such terms and conditions as the Administrator may prescribe. It may cover a specific facility or a number of facilities.

Where a state or political subdivision has been determined by EPA to have the capability to carry out response actions, the Administrator, in order to assist the state or political subdivision, may make grants from the Fund to a state political subdivision with which the Administrator has entered into a contract or cooperative agreement. These grants are to be in accordance with the terms and conditions of the contract of cooperative agreement, and are to be in amounts not to exceed the Federal share of the cost of the actions to be carried out.

Any state which expended funds during the period beginning September 30, 1985, and ending on the date of enactment of H.R.

2817, for response actions at any site included on the National Priorities List, and subject to a cooperative agreement under this Act, shall be reimbursed for its share of costs of these actions for which the Federal government is responsible. This provision is designed to ensure that any expenses incurred by a state prior to enactment of the Superfund Amendments of 1985 and after September 30, 1985, when the taxing authority expired, shall be reimbursed for the Federal share of costs of actions undertaken by the state for which the Federal government is responsible.

Paragraph 104(e)(1) of CERCLA provides that, for purposes of assisting and determining the need for response to a release, or for enforcing cleanup requirements, any person who stores, treats, disposes of, or any person who generates, transports or otherwise handles hazardous substances shall, upon the request of any officer, employee or representative of the President, or upon the request of any duly designated officer, employee or representative of a state, where appropriate, furnish information relating to the substance and permit access at all reasonable times to records relating to the hazardous substance. The amendment in subsection 104(j) of the bill provides that any officer, employee or representative of the Administrator duly designated by the Administrator, is authorized to take action with regard to access to information, entry of facilities, and inspection of samples at a facility, establishment, place or property. In addition, any duly designated officer, employee or representative of a state under a contract or cooperative agreement with EPA is also authorized to take such actions. Entry and inspection and sampling authorities may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant at the facility.

Any officer, employee or representative referred to above may require any person who has or may have information relevant to the identification or nature of materials, the nature or extent of a release or threatened release, or information relating to the ability of a person to pay for or to perform a cleanup, to furnish upon reasonable notice information or documents relating to these matters.

Any officer, employee or representative of EPA or a state is authorized to enter at reasonable times any facility, establishment, or other place or property where hazardous substances or pollutants or contaminants may be or have been stored, or from which or to which a hazardous substance or pollutant or contaminant has been or may have been released, or where entry is needed to determine the need for response, or the appropriate response, under the Act.

Any officer, employee or representative of EPA or a state is also authorized to inspect and obtain samples from any facility. If any samples are obtained before leaving the premises, the person obtaining the samples must give to the owner or operator or person in charge a receipt describing the sample obtained and, if requested, a portion of the sample. If consent is not granted for this information, the Administrator may issue an order directing compliance with the request. In addition, the Administrator may ask the Attorney General to commence a civil action to compel compliance with a request for the information. A civil penalty may be assessed not to exceed $25,000 for each day of noncompliance.

Subsection (k) repeals current subsection 104(i), which establishes the Agency for Toxic Substances and Disease Registry (ATSDR), in light of the new provision added by section 116 addressing health related issues and defining the responsibilities of ATSDR.

Subsection (l) imposes mandatory schedules requiring that no fewer than 1,600 facilities be placed on the National Priorities List (NPL) by January 1, 1988. It also requires that remedial investigations and feasibility studies (RI/FS's) for sites currently on the NPL be completed at the rate of one third within eight months, two thirds within 16 months and the remainder within 24 months of the date of enactment. RI/FS's for newly listed facilities must be commenced at the rate of 200 facilities during the first 12 months after two years after enactment, 225 facilities in the next 12 months, 250 facilities in the next 12 months, and 275 facilities in the fourth 12 months.

Substantial and continuous physical onsite remedial action at NPL sites must be taken at not fewer than 150 facilities per year beginning October 1, 1986.

The Committee notes that EPA uses an operable segment approach with regard to response actions at hazardous waste sites. For example, while surface cleanup is taking place, a study of possible groundwater contamination may be taking place. In addition, there may be instances where contamination of groundwater cannot be ascertained until the surface actions are completed. In these cases there may be an interruption in physical remedial action at the site. In such circumstances, where there are interruptions in physical remedial actions associated with proper performance of cleanup activities, the Committee intends that the requirement for continuous physical onsite remedial action is satisfied.

The target of commencement of physical onsite construction work at no fewer than 150 sites annually is intended to encompass initiation of substantial, continuous and final remedial work at facilities. Isolated, preliminary remedial or removal activities to set the groundwork for final cleanup which may not be commenced immediately do not satisfy the requirements of this provision. Preliminary assessments of sites on the CERCLIS (Comprehensive Environmental Response, Compensation, and Liability Information System) list as of the date of enactment of H.R. 2817 must be completed not later than January 1, 1987. If the Administrator determines that a site inspection is necessary following a preliminary assessment, it must be completed no later than January 1, 1988.

Finally, remedial actions for all facilities listed on the NPL as of the date of enactment must be completed within five years. If a remedial action at any site is not completed, the Administrator must publish an explanation of why it could not be completed in the required time period.

The purpose of subsection (1) is to insure that the Administrator substantially increases the current level of resources being devoted to implementation of all phases of the program from preliminary assessment through construction of final cleanup remedies. Attempts by the Administrator to avoid such resource commitments needed to meet commencement targets set out in the schedule by systematically addressing less hazardous or less costly sites first would be contrary to the Committee's intent and contrary to the requirement of the Act.

Subsection (m) adds a new subsection (j) to section 104 of CERCLA with regard to the scope of the Superfund program. The amendment provides that, except when the Administrator determines that a major public health or environmental emergency exists, the Administrator is not to respond to a release or threat of release from residential dwellings or business or community structures where they are not used for the deposition, storage, processing, treatment, transportation or disposal of hazardous substances; a release or threatened release into public or private drinking water supplies due to deterioration of the system through ordinary use; a release or threatened release resulting exclusively from the mining of coal for which a timely response action is available and authorized under the Surface Mine Control and Reclamation Act; or a release or threatened release of a naturally occurring substance (other than radon). The subsection also creates a high priority for facilities where a release has resulted in the closing of wells or has contaminated a sole or principal drinking water source.

Subsection (n) prohibits the location or authorization of a landfill surface impoundment, waste pile, injection well, or land treatment facility over the Unconsolidated Quartenary Acquifer or its recharge zone or streamflow source zone in the Rockaway River Basin, New Jersey.

Subsection (o) requires EPA to conduct a study of the shortage of skilled personnel available to conduct response actions under CERCLA, and to report the results to Congress within 12 months.

SECTION 105—NATIONAL CONTINGENCY PLAN

Section 105 of CERCLA requires the Administrator to revise and republish the National Contingency Plan (NCP), originally prepared pursuant to section 311 of the Federal Water Pollution Control Act, to reflect the provisions of CERCLA and to establish procedures and standards for responding to releases of hazardous substances, pollutants or contaminants, and to establish priorities among sites for taking remedial action.

Subsection (a) of the amendment requires the National Contingency Plan to be amended within 18 months to reflect the amendments to CERCLA made by the Superfund Amendments of 1985. It provides that any provision of the National Contingency Plan adopted pursuant to any other provision of law which is inconsistent with the amendments made by this bill shall not apply to response actions commenced under CERCLA after the date of enactment of this bill.

The amendment directs the Administrator, not later than 12 months after the date of enactment, to commence a proceeding to review the Hazard Ranking System in effect under the National Contingency Plan. This review is to assure to the maximum extent feasible, that the Hazard Ranking System appropriately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review for placement on the National Priorities List.

In conducting the review of the Hazard Ranking System, the Administrator must ensure that the human health risks associated with the contamination or potential contamination of surface waters, either directly or as the result of any runoff of any hazardous substance or pollutant or contaminant from sites or facilities, which are or can be used for recreation or potable water consumption, are appropriately assessed. In making this assessment the Administrator must take into account the potential migration of any hazardous substance or pollutant or contaminant through surface or groundwater to downstream sources of drinking water. Also, in conducting the review the Administrator is to evaluate the Preliminary Pollutant Limit Value System used by the Department of Defense to assess the risks of hazardous substances and compare that system with the Hazard Ranking System.

The review of the Hazard Ranking System, which is the system used by EPA to evaluate sites and determine whether or not they should be placed on the National Priorities List, must include four considerations. There are: an explanation of the Hazard Ranking System; the determination of the effect of establishing a threshold value of 28.5; a determination of a relationship between the value determined for a facility under the Hazard Ranking System and the potential hazard at the facility; and a determination of the relationship between the value determined for a facility and the types of remedial actions that are appropriate at the facility.

The Administrator is not required to reevaluate the hazard ranking of any facility which was evaluated in accordance with the criteria under section 105 of existing law and which was included on the National Priorities List.

The Hazard Ranking System is the mechanism used by EPA to determine whether a site is to be placed on the National Priorities List.

The system estimates risks presented in each of several potential "pathways" of human or environmental exposure. The portion of the Hazard Ranking System used to calculate scores for purposes of listing sites on the NPL considers three pathways: ground water, surface water air.

Within each of the three pathways of exposure, the system considers three sets of factors: factors that indicate the presence of likelihood of a release to the environment; factors that indicate the nature and quantity of the substances presenting the potential threat; and factors that indicate the human or environmental "targets" potentially at risk from the site. For each factor, the condition of the site being evaluated is compared against a scale of values, and a value is assigned to each factor at the site.

Once these values have been assigned to each factor according to the conditions existing at the site under evaluation, the values are adjusted according to their relative importance in reflecting risk, and the factors within each pathway are combined to yield a score for each pathway on a scale of 0 to 100. The three pathway scores for ground water, surface water, and air are then combined by a formula to yield a final total site score on a scale of 0 to 100. The threshold score of 28.5 has been administratively determined for the inclusion of a site on the National Priorities List.

The review of the Hazard Ranking System will determine if it appropriately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review for placement of the National Priorities List.

Any person who is or may be affected by a release or threatened release may petition the Administrator to conduct a preliminary assessment of the hazards to public health and the environment which are associated with the release. If a preliminary assessment of the release has not previously been conducted by the Administrator, he must within 12 months after receipt of the petition complete the assessment or provide an explanation of why the assessment is not appropriate. If the preliminary assessment indicates that the release may pose a threat to human health or the environment, the Administrator must promptly evaluate the release or threatened release to determine whether or not it should be placed on the National Priorities List.

Subsection (c) adds contamination or potential contamination of the ambient air which is associated with the release or threatened release to the criteria to be considered in establishing the National Priorities List of sites eligible for Superfund actions.

Subsection (d) removes the current requirement that at least 400 sites be placed on the NPL, since section 104 as amended by the bill requires 1,600 sites to be listed. Subsection (d) also changes the requirement that at least one facility from each state by listed, to a requirement that one such facility from each state be listed, in order to provide an equitable geographic distribution of sites scheduled for response actions by assuring that a facility from every state be on the NPL at all times.

Subsection (e) of section 104 amends CERCLA to provide that whenever there has been a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the Administrator as a "site cleaned up to date" on the National Priorities List, the site shall be restored to the National Priorities List without application of the Hazard Ranking System. This provision is designed to address those problems where sites have been removed from the list on the assumption that the problem has been corrected, and where it later turns out that it has not been corrected, and a release or threatened release of hazardous substances or pollutants or contaminants results. This subsection restores such a site to the National Priorities List without EPA having to go through the process of again ranking the site and placing it on the list before any response action can be taken.

SECTION 106—ABATEMENT ACTIONS

Section 106 of CERCLA provides that when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance he may require the Attorney General of the United States to secure such relief as may be necessary to abate the danger or threat. The President is also authorized to issue orders which are necessary to protect public health and welfare and the environment. Section 106 forms the basis for the Administrator's enforcement authority.

Under its provisions, judicial proceedings may be brought to compel responsible parties to perform cleanup actions at a hazardous waste site. The Administrator also may issue administrative orders compelling such actions. Section 106 of the bill amends section 106 of CERCLA to provide that these enforcement authorities do not apply with respect to any release or threatened release resulting from the normal application of a pesticide product registered under the Federal Insecticide, Fungicide and Rodenticide Act. However, nothing in this provision affects or modifies in any way the obligations or liability of any person under any other provision of state or Federal law for damages, injury or loss resulting from a release of any hazardous substances or for removal or remedial action.

SECTION 107—LIABILITY

Section 107 of H.R. 2817 modifies in a number of respects section 107 of CERCLA which relates to liability.

Under section 107 of CERCLA the owner and operator of a vessel or facility, any person who owned or operated a facility at the time that hazardous substances were disposed of at the facility, any person who arranged for disposal or treatment of hazardous substances at a facility, and any person who accepts or accepted any hazardous substance for transport to disposal or treatment facilities, is liable for the costs of removal or remedial actions incurred by the United States or a state, any other necessary costs of response incurred by any other person, and damages for injury to or destruction of natural resources, associated with a release or threatened release from the facility. There is no liability if a person can establish that the release or threat of release and the resulting damages were caused solely by an act of God, an act of war or an act or omission of a third party.

Limits of liability are set for an owner or operator or other responsible person for release of a hazardous substance. These limits do not apply where the release or threat of release of a hazardous substances was the result of willful misconduct or willful negligence within the privity or knowledge of a person; the release was caused by a violation of applicable safety, construction or operating standards; or where a person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official. In these cases, the owner, operator or responsible person is liable for the full and total costs of response and damages.

A person is not liable for damages as a result of actions taken or omitted in the course of rendering care, assistance or advice in accordance with the National Contingency Plan, or at the direction of an on-scene coordinator, with respect to an incident creating a danger to public health or welfare or the environment as a result of the release of a hazardous substance. Liability is not precluded, however, for damages which are the result of gross negligence or intentional misconduct.

Where injury to, destruction of, or loss of natural resources is involved, liability is to the United States and to any state for damages to natural resources within the state. No liability is imposed, however, where the damages to natural resources are identified in an environmental impact statement and the decision to grant a permit or license authorizes such a commitment of natural resources. The President or the authorized representative of a state acts on behalf of the public as trustee of such natural resources in order to recover for damages. The sums recovered are available for use to restore, rehabilitate, or acquire the equivalent of, such natural resources.

Each department, agency or instrumentality of the Executive Legislative and Judicial branches of the Federal government is subject to and must comply with CERCLA in the same manner and to the same extent as any non-governmental entity.

Subsection (a) of section 107 of the bill amends section 107(a)(1) of CERCLA relating to vessels. Existing law provides that the owner and operator of a vessel otherwise subject to the jurisdiction of the United States shall be liable for response costs and damages as provided in section 107. The phrase "otherwise subject to the jurisdiction of the United States" is defined in section 101(19) as meaning subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided by international agreement to which the United States is a party. The amendment deletes the phrase "otherwise subject to the jurisdiction of the United States," thereby broadening the instances in which the owner or operator of a vessel would be liable.

Subsection (b) adds a provision that costs incurred in investigating releases or threatened releases and in conducting health-related assessments or studies are recoverable from responsible parties. Also, amounts recoverable from responsible parties under section 107 may include interest.

Subsection (c) provides that the protections from liability afforded under section 107 of current law for rendering assistance in accordance with the National Contingency Plan apply to response costs as well as damages. It also makes it clear that where a person who is liable or potentially liable for response costs undertakes emergency response actions that person is not excused from such liability.

Subsection (d) provides for the appointment of Federal and state trustees to act on behalf of the public for assessing damages to natural resources for the purposes of CERCLA and section 311 of the Federal Water Pollution Control Act. Any determination a trustee makes regarding damages carries the weight of a rebuttable presumption in any judicial proceeding.

Subsection (e) creates a Federal lien for costs and damages for which a person is liable to the United States under section 107. The lien affects real property and rights in real property belonging to the person and which are subject to or affected by the remedial action. This lien may be recovered in an action in rem in the appropriate United States District Court. The lien arises at the time costs are first incurred by the United States with respect to a response action. The lien continues until the liability is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113 (six years after completion of the response action). Nothing in subsection (e) affects the right of the United States to bring an action against any person to recover all costs and damages for which the person is liable under subsection (a) of section 107.

Subsection (f) of section 107 amends section 107(i) of CERCLA which provides that there can be no recovery under section 107 for response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide and Rodenticide Act. The amendment limits this exclusion of recovery to response costs or damages resulting from the normal application of a pesticide.

SECTION 108—FINANCIAL RESPONSIBILITY

Section 108 of CERCLA requires that the owner or operator of vessels and off-shore facilities and other facilities establish and maintain evidence of financial responsibility to meet the levels of liability established in the Act.

Paragraph 108 (b)(1) of CERCLA requires that not earlier than five years after the date of enactment of Superfund the President must promulgate requirements for establishing and maintaining evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage or disposal of hazardous substances. These regulations have not yet been promulgated.

Subsection (a) of section 108 of the bill accordingly provides that these regulations must be issued not later than one year after the date of enactment of the Superfund Amendments of 1985.

Subsection (b) amends the provision on producing evidence of financial responsibility by permitting responsibility to be established by insurance, guarantee, surety bond, letter of credit, or qualification as a self insurer.

Subsection (c) modifies the phasing-in requirement for financial responsibility requirements by changing it from a period of not less than three and not more than six years to as quickly as can reasonably be achieved, but in no event more than four years.

Subsection (d) amends section 108 of CERCLA to permit direct action against a guarantor providing evidence of financial responsibility for a person if that person is in bankruptcy. A guarantor's liability is limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility.

SECTION 109—PENALTIES

Section 109 of the bill amends a number of provisions of CERCLA relating to penalties.

Subsection (a) of section 109 of the bill amends section 103(b) of CERCLA relating to notification in the event of a release of hazardous substances. Existing law provides that any person in charge of a vessel for which a hazardous substance is released or in charge of a facility for which a hazardous substance is released who fails to notify immediately the appropriate agency of the United States government as soon as he has knowledge of such release shall be fined not more than $10,000 or imprisoned for not more than one year or both.

Subsection (a) of section 109 of the bill adds the provision that a person who submits in a notification any information which he knows to be false or misleading shall also be liable for the penalty. Subsection (a) also changes the penalty of $10,000 or imprisonment for not more than one year, or both, to a penalty in accordance with section 3623 of Title 18 of the United States Code or imprisonment for not more than three years or both. Section 3623 of Title 18 provides for fines of up to $25,000 in the case of individuals and up to $500,000 in the case of persons other than individuals.

Subsection 103(b) is further amended to provide that a person who fails to provide the required notification shall also be subject to a civil penalty of not more than $25,000 for each day during which the failure to notify continues. In addition, the penalty for destruction of records pertaining to facilities, hazardous substances and releases which are required to be retained is changed from not more than $20,000 and imprisonment for not more than one year, or both, to a penalty in accordance with section 3623 of Title 18, United States Code, or imprisonment for not more than three years or both. A civil penalty of not more than $25,000 for each day the violation occurs in also provided.

Subsection (b) of section 109 amends paragraph 104(e)(2) of CERCLA relating to requests or orders from any officer, employee or representative of the President for information relating to a release of a hazardous substance or for access to records. A civil penalty is added for a failure or refusal to comply with a request or order. The amount of the penalty is not more than $25,000 for each day during which the failure or refusal continues.

Subsection (c) of the bill amends subsection 106(b) of CERCLA. Existing subsection 106(b) provides that any person who willfully violates or fails or refuses to comply with any order of the President requiring that action be taken with respect to an actual or threatened release of a hazardous substance may be fined not more than $5,000 for each day in which the violation or failure to comply continues. Subsection (c) increases the penalty from $5,000 to $25,000. It also amends the subsection to provide that liability applies not simply to a willful violation but rather applies where the party failing or refusing to comply with a request does so without sufficient cause. This amendment is designed to excuse a party from responsibility from failure or refusal to act when the party can establish that it had a reasonable belief that it was not liable or that the required response action was inconsistent with the National Contingency Plan.

Subsection (d) of section 109 amends section 108 of CERCLA relating to financial responsibility by adding a civil penalty of not to exceed $25,000 for each day of violation for a failure to comply with the financial responsibility requirements contained in section 108.

Subsection (e) of section 109 of the bill amends section 109 of CERCLA with regard to the assessment and collection of civil penalties. Section 109 of CERCLA provides that any person who, after notice and opportunity for a hearing, is found to have failed to comply with the requirements of section 108 (financial responsibility) shall be liable for a civil penalty not to exceed $10,000 for each day of violation.

Subsection (e) of the bill substitutes new language for section 109. New subsection (a) of section 109 provides that a civil penalty under CERCLA shall be assessed by the Administrator by an order made on the record after opportunity for a hearing. Before issuing an order, the Administrator must give written notice to the person to be assessed a civil penalty under the order, and an opportunity for that person to request, within 15 days, a hearing on the order.

New subsection (b) provides that in determining the amount of a civil penalty, the Administrator is to take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, ability to pay, effect on the ability to continue to do business, the history of prior violations the degree of culpability, and other matters as justice may require.

New subsection (c) provides that the amount of a civil penalty may be deducted from any sums owed by the United States to the person charged.

New subsection (d) provides that any person who requested a hearing and who is aggrieved by an order assessing a civil penalty may file a petition for review of the order within 30 days after the date the order was issued.

New subsection (e) provides that if a person fails to pay an assessment of a civil penalty after a final order making the assessment (and there is no petition for review) or after a court has entered a final judgment in favor of the Administrator, the Attorney General shall recover the amount in an action brought in an appropriate U.S. district court.

Subsection (f) of section 109 of the bill amends paragraph 112(b)(1) of CERCLA. Section 112 sets forth the procedure under which claims for response costs and damages to natural resources are made against the Fund. Paragraph 112(b)(1) provides that any person who knowingly gives or causes to be given any false information as a part of a claim shall, upon conviction, be fined up to $5,000 or imprisoned for not more than one year or both. Subsection (f) provides that the penalty shall be in accordance with section 3623 of Title 18 of the United States Code and imprisonment for not more than three years, or both.

SECTION 110—STATE INVENTORY OF HAZARDOUS SUBSTANCE UNDERGROUND STORAGE TANKS

This section adds a new provision relating to the National Contingency Plan by requiring each state to make an inventory of all underground storage tanks in the state containing any hazardous substance, and those tanks from which there is a known or threatened release of a hazardous substance. These inventories are to be submitted to EPA not later than six months after the date of the enactment of this subsection.

SECTION 111—USES OF FUND

Section 111 of the bill amends section 111 of CERCLA by adding additional items for which fund monies are available.

Section 111 of CERCLA provides that the money in the Fund may be used for payment of governmental response costs under section 105, payment of any claim for necessary response costs incurred by any other person as a result of carrying out the National Contingency Plan to the extent these costs are approved under the plan and certified by the responsible Federal official, payment of claims resulting from a release or threat of release of a hazardous substance from a vessel or facility, payment for injury to or destruction or loss of natural resources and payment of costs for assessing short and long-term injury to destruction of or loss of natural resources, payment for the costs of epidemiologic studies and maintenance of a registry of persons exposed to hazardous substances, and payment for the costs of a program to protect the health and safety of employees involved in response to hazardous substance releases. In any one year no more than 15% of the money in the Fund may be used for the cost of restoration rehabilitation or replacement of natural resources.

Subsection (a) of section 111 of the bill authorizes to be appropriated from the Hazardous Substances Superfund not more than $1,820,000,000 for each of the five fiscal years beginning after September 30, 1985 and ending before October 1, 1990. This amount is increased in any year by an amount equal to so much of the aggregate amount authorized to be appropriated as has not been appropriated before the beginning of the fiscal year involved.

Subsection (b) of section 111 provides that the Fund may be used for the cost of grants under subsection 123(e) to any group of individuals which may be affected by a release or threatened release at any facility which is listed on the National Priorities List for the purpose of enabling the group to obtain technical assistance to review and assess data and information which have been prepared by the Administrator with respect to a facility. The Fund may also be used for grants under subsection 128(e) for the training and education of workers who are or may be engaged in activities related to hazardous waste removal or containment or emergency response.

Paragraph (C)(1) adds a number of purposes or activities for which the Fund may be used. There are as follows:

> Costs incurred by the Administrator in evaluating facilities pursuant to petitions under subsection 105(b) submitted by any person who is or may be affected by a release or threatened release of a hazardous substance or pollutant or contaminant.
>
> The costs of appropriate Federal and state enforcement and oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements where the responsible party or parties have been determined but inadequate enforcement and oversight assistance has been provided by such party or parties.
>
> The costs of carrying out the research and training program under subsection 116(s) which authorizes the Secretary of Health and Human Services to conduct and support through grants, cooperative agreements and contracts research into advanced techniques for the detection, assessment and evaluation of the effects on human health of hazardous substances, and methods to assess the risks to human health presented by hazardous substances. Also included are advanced training in ecology, environmental health and similar fields. The costs financed by the Fund may not exceed $3 million for fiscal year 1986, $10 million for fiscal year 1987, $25 million for fiscal year 1988, $35 million for fiscal year 1989, and $40 million for fiscal year 1990.

The costs of carrying out the research, development and demonstration program for alternative and innovative technologies under section 117. These costs may not exceed $25 million for each of the fiscal years 1986 through 1990.

The costs of grants under section 118 relating to grants for university hazardous waste research centers. These costs may not exceed $10 million for each of the fiscal years 1986 through 1990.

Reimbursements to local governments under section 125 for expenses incurred in carrying out temporary emergency measures necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance or pollutant or contaminant, and expenses incurred in carrying out emergency measures for the protection of public drinking water supplies. During the five fiscal year period beginning October 1, 1985, not more than 0.2 percent of the total amount appropriated from the Fund may be used for these reimbursements.

The costs of worker training and education grants under subsection 128(e) to the extent that these costs do not exceed $10 million for each of the fiscal years 1986 through 1990.

Paragraph 111(c)(2) of the bill adds laboratory studies, health assessments and preparation of toxicologic profiles to those items which may be paid for from the Fund.

Subsection (d) provides that for the purposes of this provision health assessments include a determination of the potential human health risks posed by a facility as set forth in paragraph 116(f)(7).

Subsection (e) of section 111 amends subsection 111(d) of CERCLA by deleting paragraph (2) of subsection (d), which provides that no money in the Fund may be used for the payment of any claim for injury or loss relating to long term exposure to ambient concentrations of air pollutants. (The Committee notes that the deletion of paragraph (2) was an inadvertent drafting error which will be corrected so as to retain the prohibition against use of the Fund for losses resulting from air pollution.)

Subsection (f) of section 111 contains two technical amendments to subsection 111(e) of CERCLA which deals with claims against the Fund. Paragraph 1 of subsection 111(e) provides that claims against the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. The amendment limits the reference to claims to those for response costs. Paragraph (2) of subsection 111(e) is amended to add to the requirement that 85 percent of the Fund be used for purposes other than natural resources damages, the provision that the repayment of advances to the Fund under section 223 is included among those purposes for which the 85 percent is to be used.

Subsection (g) amends subsection 111(k) of CERCLA, which relates to audits.

Subsection (k) of existing law directs the inspector general of each department or agency to which responsibility to obligate money in the Fund is delegated to provide an audit review team to audit all payments, obligations, reimbursements or other uses of the Fund to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. Each inspector general is directed to submit to the Congress an interim report one year after the establishment of the Fund and a final report two years after the establishment of the Fund. Such auditing of the Fund as is appropriate is to be provided thereafter.

Subsection (g) of section 111 of the bill amends this provision to provide that in each fiscal year the inspector general of each department, agency or instrumentality of the United States which is carrying out any authority of the Superfund Act, shall conduct an annual audit of all payments, obligations, reimbursements or other uses of the Fund in the prior fiscal year to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The audit is to include an examination of a random sample of agreements with states carrying out response actions under the Act and an examination of remedial investigations and feasibility studies prepared for remedial actions. Each inspector general is also to prepare a report on the status of all remedial and enforcement actions undertaken during the prior fiscal year and an estimate of the amount of resources including the number of work-years or personnel which would be necessary for the department, agency or instrumentality to complete the implementation of all duties vested in that department, agency or instrumentality under the Superfund Act. An annual report must be submitted to Congress regarding the audit and status report required under this section. The report is to contain such recommendations as the inspector general deems appropriate. Each Federal agency is directed to cooperate with the Inspector General in carrying out ths section.

subsection (h) of section 111 of the bill provides that there is authorized to be appropriated out of any money in the Treasury to the Hazardous Substance Superfund $250 million per year for fiscal years 1986 through 1990. This amount is available only to the extent that it exceeds amounts recovered on behalf of the Trust Fund for the prior fiscal year. In addition there is authorized to be appropriated to the Fund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated as has not been appropriated before the beginning of the fiscal year.

Finally, subsection 111(i) provides that for fiscal year 1986 and each fiscal year thereafter, not less than $30 million shall be directly available from the Fund to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out health effects research and public health assessment and protection activities under paragraph 111(c)(4) and section 116.

SECTION 112—CLAIMS PROCEDURE

This section amends section 112 of CERCLA which sets forth claims procedures under the Act.

Section 112 establishes the procedures for filing claims against the Fund and the manner in which claims are to be considered and satisfied or denied. Subsection (d) of section 112 provides that no claim may be presented nor any action be commenced for damages unless that claim is presented or action commenced within three years from the date of the discovery of the loss or the date of enactment of CERCLA, whichever is later. Section 112 of the bill amends subsection (d) to provide that no claim may be presented for recovery of response costs after the date six years after the date of completion of the response action.

SECTION 113—LITIGATION, JURISDICTION AND VENUE

This section amends section 113 of CERCLA. Section 113 provides that review of any regulation promulgated under the Act may be had upon application by an interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. The application must be made within ninety days from the date of promulgation of the regulation. Any matter with respect to which review could have been obtained under section 113 shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs. The United States District Courts are given exclusive original jurisdiction over all controversies arising under the Act.

Section 113 of the bill adds a number of new provisions to existing law.

Subsection (a) of section 113 amends section 113 of CERCLA by adding the provision that in any action by the United States under section 106 (abatement actions) or 107 (recovery of response costs) process may be served in any district where the defendant is found, resides, transacts business or has appointed an agent for the service of process.

Subsection (b) of section 113 of the bill adds a number of new provisions to section 113 of CERCLA.

New subsection (g) expressly recognizes the right to contribution. Any defendant alleged or held to be liable in an action under section 106 or section 107 may bring an action for contribution or indemnity against any other person liable or potentially liable. The right of contribution does not apply against a party which has resolved its liability to the United States or a state in a judicially approved good-faith settlement. That party is not to be liable for claims for contribution or indemnity regarding matters addressed in the settlement. The settlement, however, does not discharge any of the other parties unless its terms so provide. But it does reduce the claim against the others to the extent of any amount stipulated by the settlement.

Nothing in subsection (g) is to be construed as affecting or modifying in any way the rights of the United States, a state or any person who has resolved his liability to the United States or a state in a good-faith settlement to seek contribution or indemnification against any persons who are not party to a settlement.

Any contribution action brought under this subsection is to be governed by Federal law. The rights of any person who has resolved his liability to the United States or a state are to be subordinated to the rights of the United States and any state. This subordination may be waived by the Administrator, however, if he determines that such waiver will expedite a settlement and the cleanup covered by the settlement.

New subsection (h) provides that no action may be commenced for damages to natural resources unless that action is commenced within three years after the later of the date of the discovery of the loss or the date on which regulations are promulgated under subsection 301(c) of CERCLA.

No action may be commenced under section 107 for recovery of response costs after six years after the date of completion of the response action. An action may be commenced under section 107 at any time prior to the end of the six-year statute of limitations for recovery of costs at any time after these costs have been incurred. This will allow costs to be recovered incrementally as the response action continues.

No action for contribution for any response costs or damages may be commenced more than three years after the date of judgment in any action for recovery of costs or damages or three years after the date of entry of a judicially approved settlement with respect to the costs and damages.

No action based on rights subrogated pursuant to this section by reason of payment of a claim may be commenced more than three years after the date of payment of the claim.

Subsection (c) of section 113 of the bill adds a provision prohibiting pre-enforcement review of the choice of removal or remedial actions. It provides that no court shall have jurisdiction to review any challenges to removal or remedial actions selected under subsection 104 or any order issued under section 104(b) or to review any order issued under subsection 106(a) in any action other than one of the following:

> An action under section 107 to recover response costs or damages or for contribution or indemnification.
>
> An action to enforce an order issued under subsections 104(b) or 106(a) or to recover a penalty for violation of the order.
>
> An action for reimbursement under paragraph 106(b)(2).
>
> An action under section 310 of CERCLA (Citizens Suits) alleging that the removal or remedial action taken under section 104 or secured under section 106 was in violation of any requirement of the Act. Such an action, however, may not be brought with regard to an ongoing removal where a remedial action is to be undertaken at the site.
>
> An action under section 106 for injunctive relief or a motion to review the Administrator's selection of the remedy under a consent decree which has been entered under section 106 and in which a potentially responsible person has made a commitment to undertake a remedial investigation and feasibility study and to implement the remedial action decision of the Administrator following review.

This situation would occur only in insances where a commitment to perform a remedial investigation and feasibility study was made prior to enactment of H.R. 2817 because of the provision in section 104 of the bill prohibiting parties from performing remedial investigations and feasibility studies.

The purpose of this provision is to ensure that there will be no delays associated with a legal challenge of the particular removal or remedial action selected under section 104 or secured through administrative order or judicial action under section 106. Without such a provision, responses to releases or threatened releases of hazardous substances could be unduly delayed, thereby exacerbating the threat of damage to human health or the environment. A person's rights to challenge the choice of removal or remedial action are preserved, however, and can be exercised when an action is taken against a responsible party to recover response costs of damages under section 107, an action to enforce an order to perform response actions, an action for reimbursement for cleanup costs expended by a person order than the Administrator, a citizen suit alleging that the removal or remedial action was in violation of any requirement of the Act, and an action under section 106 by the United States to secure injunctive relief.

In any judicial action under section 106 or 107, judicial review of any issues concerning the adequacy of any response action taken or ordered by the Administrator are to be limited to the administrative record. The objections which may be raised in this action must be based upon the comments received and the evidence contained in the record. In considering these objections, the court is to uphold the Administrator's decision in selecting the response action unless the objecting party can demonstrate on the administrative record that the decision was arbitrary and capricious or otherwise not in accordance with the law. If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in accordance with the law, the court is to award only the response costs or damages or other relief being sought to the extent that this relief is not inconsistent with the National Contingency Plan. These provisions, as those discussed earlier, are designed to expedite the process of review and assure that the administrative record contains sufficient information to permit all parties concerned to adequately review the action undertaken or ordered.

The Administrator of EPA is directed to issue regulations establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which judicial review of response actions will be based. For remedial actions, these regulations shall include procedures for providing before adoption of any plan for remedial action, each of the following:

> Notice to potentially affected persons and the public which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.
>
> A reasonable opportunity to comment and provide information regarding the plan.
>
> An opportunity for a public meeting in the affected area.
>
> A response to each of the significant comments, criticisms and new data submitted in written or oral presentations under the procedures.
>
> Agency support for the basis and purpose of the selected action.

Subsection (d) of section 113 of the bill provides that any person who is issued and complies with any order under section 106 of CERCLA may, within sixty days of completion of the required action petition the Administrator for reimbursement from the Fund for the reasonable costs of the action plus interest. If the Administrator refuses to grant all or part of a petition made for reimbursement the petitioner may, within thirty days of receipt of such refusal, file an action against the Administrator seeking reimbursement from the Fund. In order to obtain reimbursement, the petitioner must establish by a preponderance of the evidence that it is not liable for response costs and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order. A petitioner who is liable for response costs under subsection 107(a) may also recover its reasonable costs of response to the extent that it can demonstrate on the administrative record that the Administrator's decision in selecting the response action ordered was arbitrary and capricioius or was otherwise not in accordance with law. Reimbursement must include all reasonable costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law. Reimbursement awarded by a court may include appropriate costs, fees and other expenses in accordance with the Equal Access to Justice Act. Any reimbursement awarded under this provision shall not be paid from the Hazardous Substance Superfund.

SECTION 114—RELATIONSHIP TO OTHER LAW

Subsection 114(c) of CERCLA provides that except as provided in CERCLA, no person may be required to contribute to any fund the purpose of which is to pay compensation for claims for any costs of response or damages or claims which may be compensated under CERCLA. Section 114 of the bill removes this Federal preemption of state law and provides instead that notwithstanding any provision of CERCLA of any other law, a state may require any person to contribute to any fund the purpose of which is to pay for any costs of response or damages.

SECTION 115—DELEGATION OF FUNCTIONS

Section 115 of CERCLA authorizes the President to delegate and assign any duties or powers imposed upon or assigned to him and to promulgate any regulations necessary to carry out the provisions of the Act. Section 115 of the bill amends current law to authorize the President to delegate and assign any duties or powers imposed upon or assigned to him necessary to carry out the provisions of Title I of CERCLA. It also authorizes the Administrator to delegate and assign to officers and employees of the Environmental Protection Agency any duties or powers imposed upon or assigned to him necessary to carry out the provisions of Title I. Subsection (b) of section 115 authorizes the Administrator to issue any regulations necessary to carry out the provisions of Title I.

The amendments made by section 115 are conforming changes made because of the substitution of the Administrator for the President with regard to the carrying out of the Act.

SECTION 116—PUBLIC HEALTH ASSESSMENT AND PROTECTION AUTHORITIES

This section creates a new section 116 of CERCLA titled Agency for Toxic Substances and Disease Registry (ATSDR). The provisions of this section replace those formerly contained in section 104(i) of CERCLA, which is repealed by subsection 104(k) of the bill.

Subsection 104(i) of CERCLA establishes the Agency for Toxic Substances and Disease Registry within the Public Health Service. The Administrator of ATSDR reports to the Surgeon General and is tasked with implementing the health related authorities of the Act. These authorities include the establishment and maintenance of: a national registry of diseases and illnesses associated with any persons exposed to hazardous substances, and a data base on the health effects of hazardous substances. They also include the requirement to (1) provide medical care and testing to individuals exposed to toxic substances in cases of public health emergencies, and (2) conduct periodic survey and screening programs.

CERCLA's subsection 104(i) does not clearly define specific roles and responsibilities of ATSDR and EPA in implementing the subsection's and other health related authorities. The bill's new section 116 corrects this deficiency and, at the same time, revises and expands the statutory charter of ATSDR. Section 116's primary purpose is to properly recognize that adequate health related activities are necessary to support CERCLA response actions through toxicological profiles, health effects studies, health assessments, research and training, health surveillance programs, and other efforts designed to improve the ability to make public health decisions through expanding the existing body of scientific knowledge.

The Committee recognizes that EPA currently performs much valuable work critical to implementation of Superfund in the areas of prioritizing hazardous substances, preparing toxicological profiles, and conducting health effects research. While providing increased authority to ATSDR in section 116, the Committee does not intend for EPA to halt or diminish its efforts in these areas. Rather, the Committee intends to place increased emphasis on and augment the resources dedicated to completing this important work.

Subsection (a) of section 116 establishes the Agency for Toxic Substances and Disease Registry within the Public Health Service. The Agency is headed by an Administrator who reports to the Secretary of the Department of Health and Human Services.

Subsection (b) states that the duties of the Administrator of ATSDR are to effectuate and implement the health-related authorities of CERCLA. The Administrator is to carry out these duties with the cooperation of the Administrator of EPA; the Commissioner of the Food and Drug Administration; the Directors of the National Institutes of Health, the National Institute of Environmental Health Sciences, the National Institute of Occupational Safety and Health, and the Center for Disease Control; the Administrator of the Occupational Safety and Health Administration; the Administrator of the Social Security Administration; and appropriate state and local officials.

Subsection (c) provides that, in cooperation with the states and other agencies of the Federal Government, the Administrator of ATSDR shall establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of contamination by hazardous substances.

Subsection (d) states that, within six months after the date of the enactment of section 116, the Administrator of ATSDR, in consultation with the Administrator of EPA, shall prepare a list, in order of priority, of at least 100 hazardous substances which are most commonly found at facilities on the National Priorities List and which are posing the most significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances at facilities on the National Priorities List or at facilities to which a response to a release or a threatened release under section 104 of CERCLA is under consideration. Subsection (d) also provides that, within 24 months after the date of the enactment of section 116, the Administrator of ATSDR, in consultation with the Administrator of EPA, shall revise this list. The revision must include, in order of priority, the addition of 100 or more hazardous substances. In each of the three consecutive 12-month periods that follow, the Administrator of ATSDR shall revise the list in similar fashion to include not fewer than 25 additional hazardous substances. The Administrator of ATSDR, in consultation with the Administrator of EPA, shall at least once every year thereafter revise the list to include additional hazardous substances in accordance with subsection (d)'s criteria.

Subsection (e) of section 116 addresses information on health effects.

Paragraph (e)(1) requires the Administrator of ATSDR to establish and maintain an inventory of research literature, reports, and studies on the health effects of each hazardous substance listed under subsection (d).

Paragraph (e)(2) requires the Administrator of ATSDR to prepare toxicological profiles of each of the subsection (d) listed substances. The Administrator is to prepare these profiles based on all available information, including information maintained under paragraph (e)(1) and data developed and collected on the health effects of hazardous substances under this paragraph. Toxicological profiles are to be prepared in accordance with guidelines developed by the Administrator of ATSDR, in consultation with the Administrator of EPA and shall include, but not be limited to: (1) an examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects; (2) a determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects; and (3) where appropriate, toxicological testing directed toward determining the maximum exposure level of a hazardous substance that is safe for humans. The profiles required to be prepared under paragraph (e)(2) for the first 100 hazardous substances listed must be completed, at a rate of 25 per year, within four years after the date of the enactment of section 116. A profile required on a substance listed in any revision to the original list of hazardous substances shall be completed within three years after addition to the list. The profiles prepared shall be of those substances highest on the list of priorities under subsection (d) for which profiles have not previously been prepared. Profiles must be revised and republished as necessary, but at least once every three years. They shall be provided to the states and made available to other interested parties.

Paragraph (e)(3) of section 116 requires that, for any hazardous substance for which adequate information is not available, the Administrator of ATSDR must assure the initiation of a program of research designed to determine the health effects of such hazardous substance. Where feasible, the research program must seek to develop methods to determine the health effects of the hazardous substance in combination with other hazardous substances with which it is commonly found. Before assuring the initiation of the research program, the Administrator of ATSDR shall consider recommendations of the Interagency Testing Committee established under subsection 4(e) of the Toxic Substances Control Act (TSCA) on the types of research that should be done and on who should do the research.

Paragraph (e)(4) of section 116 provides that, in the development and implementation of any research program under subsection (e), the Administrator of ATSDR and the Administrator of EPA shall coordinate that research program with programs of toxicological testing established under the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The purpose of the coordination shall be to avoid duplication of effort and to assure that the listed hazardous substances are tested thoroughly at the earliest practicable date. Where appropriate in the discretion of the Administrator of ATSDR and consistent with this purpose, a research program under subsection (e) may be carried out using the TSCA and FIFRA programs of toxicological testing.

In providing this authority, the Committee in no way intends that the Administrator of ATSDR will in any way assume control over the TSCA and FIFRA toxiciological testing programs. That responsibility properly is vested in the Administrator of EPA and is intended to remain there undiminshed by H.R. 2817. Rather, the Committee intends for the Administrator of ATSDR to cooperate with the Administrator of EPA and, when both agree, to utilize the results of and expertise and experience residing in the TSCA and FIFRA toxicological testing programs to accomplish the objectives of section 116.

Subsection (f) of section 116 deals with health assessments.

Paragraph (f)(1) requires the Administrator of ATSDR to perform a health assessment for each facility on CERCLA's National Priorities List (NPL) at which (1) the presence of a hazardous substance has been confirmed at the facility; (2) pathways of human exposure to hazardous substances have been demonstrated to exist at the facility, especially if such pathways involve direct contact with hazardous substances; and (3) a human population has been exposed, or there exists a significant possibility that a human population has been exposed, to hazardous substances through the identified pathways and there may exist a significant threat of current or future adverse health effects for the population so exposed. The determination of whether any facility on the NPL meets such criteria shall be based on information provided by the Administrator of EPA regarding such criteria. Nothing in paragraph (f)(1) precludes the Administrator of ATSDR from performing, where appropriate and consistent with the National Contingency Plan, health assessments of releases of hazardous substances from any other facilities, including facilities which are not on the NPL. Paragraph (f)(1) authorizes the Administrator or any state to request the Administrator of ATSDR to perform a health assessment under this section and requires the Administrator of ATSDR and the Administrator of EPA to coordinate the performance of their health assessments.

Paragraph (f)(2) authorizes any individual or group of individuals to submit a petition to the Administrator of ATSDR to perform a health assessment under subsection (f). The petition shall provide evidence demonstrating that such individual or group is being exposed to a hazardous substance, and an empirical analysis of the level of exposure. The Administrator of ATSDR shall initiate a health assessment within 45 days after having determined that there is a reasonable likelihood that the exposure may present a signficiant risk to human health and that there is a reasonable likelihood that the hazardous substance is either from (1) a facility where the hazardous substance is or was treated, stored, recycled, or disposed of, on a regular basis, or (2) a facility at which removal action is being or was taken in the past under any provision of CERCLA.

Paragraph (f)(3) requires the Administrator to take one of three actions within 45 days after receiving a petition for a health assessment. The Administrator must either initiate the requested health assessment, respond in writing to the petition by setting a schedule for review of the petition or a schedule to initiate the requested health assessment, or publish a written explanation as to his determination that (1) there is not a reasonable likelihood that the substance addressed in the petition is from a facility described in paragraph (f)(2), (2) there is not a reasonable likelihood that the exposure presents a significant risk to human health, or (3) the evidence submitted or information available to the Administrator of ATSDR is not adequate to determine whether there is a reasonable likelihood that the substance is from a facility referred to in paragraph (f)(2) or there is a reasonable likelihood that the exposure presents a significant risk to human health. If in the latter case the Administrator of ATSDR determines that the evidence submitted is not adequate, he must identify in the written explanation the additional information necessary to determine whether there is a reasonable likelihood that the substance is from a paragraph (f)(2) facility or there is a reasonable likelihood that the exposure may present a significant risk to human health. Finally, paragraph (f)(3) provides that each health assessment undertaken must be completed within six months of the date on which it was initiated.

Paragraph (f)(4) provides that, in determining the priority in which to conduct health assessments under subsection (f), the Administrator of ATSDR, in consultation with the Administrator of EPA, must give priority to those facilities at which there is documented evidence of the release of hazardous substances, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of ATSDR existing health assessment data are inadequate to assess the potential risk to human health.

Paragraph (f)(5) requires the Administrator of ATSDR, where a health assessment is done at a site on the National Priority List, to complete the assessment promptly and, as practicable, before the completion of the remedial investigation and feasibility study at the facility concerned.

Paragraph (f)(6) requires any state or political subdivision carrying out a health assessment for a facility to report the results of the assessment to the Administrator of ATSDR and the Administrator of EPA and to include recommendations with respect to further activities which need to be carried out under section 116. The Administrator of ATSDR must describe any state's or political subdivision's recommendation in any report on the results of any assessment carried out directly by the Administrator of ATSDR for such facility and must issue periodic reports which include the results of all the assessments carried out under subsection (f).

Paragraph (f)(7) defines the term "health assessment" for purposes of sections 116 and paragraph 111(c)(4) to mean a determination of the potential human health risks posed by a facility. An assessment may include literature searches, information summarization and evaluation of existing environmental data, pilot samples, testing for food chain contamination, and similar activities. Under paragraph (f)(7), a health assessment must, however, at a minimum be based on: (1) the nature and extent of contamination; (2) the existence, scope, and magnitude of potential pathways of human exposure (including ground and surface water contamination, air emissions, and food chain contamination); (3) the size, population characteristics, and potential susceptibility of the community within the likely pathways of exposure; (4) the comparison of measured or estimated human exposure levels which are identified for hazardous substances and any exposure levels for such hazardous substances which are determined to be of significance to human health, including but not limited to those determined in the toxicological profiles under paragraph (e)(2) of section 116; and (5) the comparison of appropriate existing morbidity and mortality data, relevant to the suspected population at risk of exposure, on diseases that may be associated with the observed levels of exposure. Paragraph (f)(7) also provides that if a significant excess of disease in a population is identified, the health assessment must also include appropriate epidemiological analyses, including the assessment of attributable risk, to determine the most likely explanations for that excess. Finally, paragraph (f)(7) requires the Administrator of ATSDR to utilize appropriate data available from the Administrator of EPA to avoid duplication of effort.

Paragraph (f)(8) states that the purpose of health assessments is to assist in determining whether abatement actions under subsection (k) of section 116 should be taken to reduce human exposure to hazardous substances from a facility and whether additional information on human exposure and associated health risks in needed and should be acquired by conducting epidemiological studies establishing a registry of exposed persons, establishing a health surveillance program, or through other means. Paragraph (f)(8) also provides that, in using the results of health assessments for determining additional actions to be taken under section 116, the Administrator of ATSDR may consider additional information on the risks to the potentially affected population from all sources of such hazardous substances including known point or nonpoint sources other than those from the facility in question.

Paragraph (f)(9) requires the Administrator of ATSDR, at the completion of each health assessment, to provide the Administrator of EPA and each affected state with the result of the assessment, including recommendations concerning the need to further reduce exposure. If the health assessment indicates that the release or threatened release concerned may pose a threat to human health or the enviroment, the Administrator of ATSDR must, under paragraph (f)(9) notify the Administrator of EPA who shall promptly evaluate the release or threatened release in accordance with EPA's hazard ranking system to determine the national priority of the release or threatened release.

Paragraph (f)(10) authorizes the costs of a health assessment be be recovered as a cost of response under section 107 of CERCLA where the assessment was performed under subsection (f) of the bill's section 116 or was required by subsection 3019(b) of the Solid Waste Disposal Act and the assessment discloses the exposure of a population to the release of a hazardous substance from a facility.

Subsection (g) of new section 116 addresses studies.

Paragraph (g)(1) provides that, whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment or on the basis of a petition of any individual or group of individuals which demonstrates that the individual or individuals are being exposed to a hazardous substance and provides an empirical analysis of the level of exposure, the Administrator of ATSDR must conduct a pilot study of health effects for selected groups of exposed individuals, in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population. Under the paragraph, the Administrator of ATSDR must, within 45 days after completion of a health assessment under section 116 or receipt of a petition under paragraph (g)(1), either initiate a pilot health effects study under the paragraph or publish a written explanation of a determination that the release or threatened release that is the subject of the assessment, or the exposure that is the subject of the petition, does not present a significant risk to human health. Each health effects study carried out under subsection (g) shall (1) ascertain the nature, magnitude, scope, and duration of the exposure of individuals to the hazardous substance concerned; (2) identify, where possible, other individuals within the community who may be exposed to the same release; and (3) at a minimum, include a determination, where possible, of the source of any groundwater contamination involved; a toxiciological and epidemiological evaluation of each hazardous substance involved; and any necessary medical testing of individuals. Finally, each subsection (g) study must be completed within nine months after the date on which the health assessment is completed or the petition is filed.

Paragraph (g)(2) provides that, whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a pilot study or other study or health assessment, the Administrator of ATSDR shall conduct a full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances from a release or threatened release.

Subsection (h) of new section 116 provides that, in any case in which the results of a health assessment or epidemiologic study indicate a potential or observed significant risk to human health, the Administrator or ATSDR must evaluate whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of subsection (h). Subsection (h) also provides that the Administrator of ATSDR must establish a registry when his evaluation determines that an effective mechanism can be established to satisfactorily maintain the registry over a sufficient period of time to accomplish the desired purposes of the subsection and either (1) the registry could benefit its participants by prevention or early detection of serious adverse health effects from exposure to hazardous substances, or (2) the registry could provide significant information not currently available on human health effects of exposure to one or more hazardous substances. Finally, subsection (h) provides that the identity of any individual listed on a registry shall not be disclosed to any person except as may be necessary to carry out section 116. Furthermore, any person violating this requirement shall be fined not more than $1,000 or imprisoned for not more than six months, or both, and shall be required to pay the costs of prosecution.

Subsection (i) of new section 116 requires the Administrator of ATSDR to initiate a health surveillance program whenever he makes two determinations: (1) that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances based on the results of a subsection (f) health assessment, a subsection (g) epidemiological study, or a subsection (h) exposure registry; and (2) that such exposure is the result of a release from a facility. Under subsection (i), the health surveillance program shall include, at a minimum, appropriate periodic medical testing of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk, and a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

Subsection (j) of new section 116 requires the Administrator of ATSDR, two years after the date of the enactment of subsection (j) and every two years thereafter, to prepare and submit to the Administrator of EPA, the House Committees on Energy and Commerce and Public Works and Transportation and the Senate Committee on Environment and Public Works a report on the results of the activities of ATSDR regarding (1) health assessments and pilot health effects studies conducted; (2) epidemiologic studies conducted; (3) hazardous substances which have been listed under subsection 116(d), toxicological profiles which have been developed, and toxicological testing which has been conducted or which is being conducted under subsection 116(e); (4) registries established under subsection 116(h); and (5) an overall assessment, based on the results of activities conducted by the Administrator of ATSDR, of the linkage between human exposure to individual or combinations of hazardous substances due to releases from facilities covered by CERCLA or the Solid Waste Disposal Act and any increased incidence or prevalence of adverse health effects in humans.

Subsection (k) of new section 116 provides that, if a health assessment or other study receiving peer review carried out under CERCLA identifies an individual or individuals exposed to a hazardous substance in a manner which presents a significant risk to human health, the Administrator must take whatever steps are necessary to abate the risk. Such steps may include providing alternate household water supplies and relocating individuals on a temporary or permanent basis. When, in the judgment of the Administrator of ATSDR or the Administrator of EPA, the information is insufficient to determine a significant human exposure level with respect to a hazardous substance, the Administrator may act necessary to reduce the exposure of any person to the hazardous substance to a level the Administrator deems necessary to protect human health.

Subsection (l) of new section 116 provides that, in the case of any hazardous substance which is subject to a petition or study under section 116, nothing in section 116 shall be construed to delay or otherwise impair the authority of the Administrator of EPA to exercise any authority vested in him under any other provision of law, including, but not limited to, the imminent hazard authority of Section 7003 of the Solid Waste Disposal Act or the response and abatement authorities of CERCLA.

Subsection (m) of new section 116 states that all studies and results of research (including health assessments) and all toxicological profiles conducted under section 116 must undergo appropriate peer review before being reported or adopted. The peer review required under subsection (m) must be completed within 60 days and must be conducted by panels consisting of no less than three nor more than seven members, who shall be scientific experts selected by the Administrator of ATSDR on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. The Administrator of ATSDR must provide support services for the peer review panels.

Subsection (n) of new section 116 directs the Administrator of ATSDR, in implementing section 116 and other health related authorities of CERCLA, to assemble and distribute to the states, and, upon request, to medical colleges, physicians, and other health professions, appropriate educational materials on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to expsoure to hazardous substances.

Subsection (o) directs the Administrator of ATSDR to carry out the activities described in section 116 and paragraph 111(c)(4) of CERCLA either directly or through cooperative agreements with states (or political subdivisions thereof) which the Administrator of ATSDR determines are capable of carrying out such activities. These activities are to include consultations on health information, health assessments, (including those required under subsection 3019(b) of the Solid Waste Disposal Act), health studies, registries, and health surveillance.

Subsection (p) requires the President to employ at least 100 people in ATSDR, or whatever high number assures the Agency of adequate personnel. For purposes of determining the number of employees under subsection (p), an employee employed at ATSDR on a part-time career employment basis is to be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek.

Subsection (q) assures that, in accordance with section 120 of the bill, the Administrator of ATSDR has the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as such Administrator has with respect to any nongovernmental entity.

Subsection (r) requires the Administrator of ATSDR, in the case of public health emergencies caused or believed to be caused by exposure to toxic substances, to (1) provide medical testing and care to exposed individuals, including, but not limited to, tissue sampling, chromosomal testing, epidemiological studies, or any other assistance appropriate under the circumstances; (2) offer technical assistance and consultation to local and state health authorities that are providing medical testing and care to exposed individuals; and (3) use any authority provided under this section. The Administrator of ATSDR must take these actions whether or not the determinations or other preliminary steps otherwise required under section 116 have been made or taken. Subsection (r) further requires that nothing in the subsection be construed as creating an entitlement program.

Subsection (s) of section 116 addresses hazardous substance research and training.

Paragraph (s)(1) authorizes the Secretary of Health and Human Services to conduct and support, in consultation with the Administrator of EPA, various research and training related to hazardous substances. This may be accomplished through grants, cooperative agreements, and contracts and may address research including epidemiologic and ecologic studies and development and demonstration programs) in (1) advanced techniques for the detection, assessment, and evaluation of the effects on human health of hazardous substances; and (2) methods to assess the risks to human health presented by hazardous substances. The Secretary may also conduct and support advanced training in ecology, environmental health, chemical engineering, and molecular biology and in the techniques and methods referred to in item (1) above.

Paragraph (s)(2) provides that the Director of the National Institute for Environmental Health Sciences, in carrying out the purposes of section 116, must cooperate fully with the Federal agencies represented on section 119's National Research Advisory Council.

Paragraph (s)(3) provides that grants, cooperative agreements, or contracts may be made or entered into under paragraph (s)(1) with an accredited institution of higher learning. The institution may conduct the research or training under the grant, cooperative agreement, or contract through contracts, including contracts with (1) hazardous waste generators; (2) persons involved in the development of innovative technologies, processes, equipment, and related devices, which can be used to control, contain, and treat hazardous substances; (3) owners and operators of facilities at which hazardous substances are located; and (4) state and local governments.

Paragraph (s)(4) requires the Secretary of Health and Human Services, in making grants and entering into cooperative agreements and contracts under subsection (s), to act through the Director of the National Institute for Environmental Health Sciences who must follow the procedures applicable to grants and contracts under Title IV of the Public Health Service Act.

SECTION 117—DEVELOPMENT OF INNOVATIVE AND EXPERIMENTAL TECHNOLOGIES

Section 117, among other things, states Congressional findings concerning innovative and alternative technology development; adds a new section 117 to CERCLA establishing a research, evaluation and demonstration program; amends provisions of CERCLA regarding testing procedures and standards in the National Contingency Plan; and directs the Administrator to study and report on the feasibility of establishing regional treatment centers.

The initial Superfund program was viewed five years ago as temporary and was assembled quickly to deal with a technically complex and unique environmental threat defined, at the time, only in a preliminary way. Superfund's strategy was oriented to taking limited responses at the worst sites and to addressing, for the most part, immediate threats to human health. Today the Superfund program continues to have a built-in bias for short-term, non-permanent cleanups.

The Committee firmly believes that this situation must change. An examination of EPA's efforts to cleanup Superfund sites indicates that EPA largely relies on a combination of removal to RCRA disposal facilities of contaminated materials and construction of physical barriers to prevent migration of remaining hazardous wastes into the environment. While such matters are likely to reduce the risk of release of hazardous substances in the short-term, serious questions have been raised about the safety, effectiveness, and cost of such measures over the long-term.

This Committee, the Committee on Science and Technology, the Office of Technology Assessment (OTA), and others have listened to these questions and attempted to address them. The Committee on Science and Technology, particularly, has dealt with the innovative and alternative technologies issue extensively. After numerous hearings, on September 4 of this year the Committee reported H.R. 3065, the Superfund Cleanup Technology Research and Demonstration Act (House Report 99-255). The Committee on Public Works and Transportation has reviewed in detail the work of the Science and Technology Committee and has largely followed the approach of H.R. 3065 in new section 117.

The Public Works Committee has also listened to and extensively analyzed OTA's comments. A recent OTA Report (March 1985) succinctly stated the problem and need for legislation. According to OTA, not enough research, development, and demonstration is devoted to innovative cleanup technologies. Many innovations exist, but few have overcome institutional barriers to their use as is the case with OTA, the Public Works Committee believes that long-term environmental and economic benefits of permanent cleanups have not been assessed properly or considered when technologies are being chosen. To date, EPA has not—for a variety of legal, economic and administrative reasons—adequately encouraged innovative technologies. By statute, the Trust Fund established under

CERCLA for cleaning up Superfund sites cannot be used for research other than research which is directly relevant to short-term, emergency and remedial response activities. While the hazardous waste research program under RCRA provides some encouragement for the development of innovative technologies, it does not adequately address research problems of particular importance to the Superfund program.

The purpose of new section 117 is to address such problems. It builds upon EPA's existing research capabilities to ensure the development and use of permanent solutions to the problems of hazardous waste sites. Section 117 supplements EPA's present expertise in hazardous waste research by establishing a research program specifically designed to develop, test and evaluate permanent Superfund cleanup technologies. Further, section 117 directs a solution-oriented approach to EPA's research. By focusing on the need to apply the results of research to Superfund cleanup problems, section 117 furthers cooperation and coordination between EPA's research office and its regulatory office, which ultimately has the legal responsibility to choose the methods for cleaning up Superfund sites.

Paragraph (a)(1) of the Findings and Purpose section sets out the Congress' findings that the EPA's practice of relying upon removal and containment measures does not provide permanent protection, and that alternative or innovative treatment technologies which permanently alter the composition of hazardous waste to reduce the toxicity, mobility, or volume of wastes can provide significantly greater long-term protection. Congress also finds that various regulatory factors have often inhibited the use and development of new technologies, and that a sustained program of research, development and demonstrations of alternative or innovative treatment technologies for use in Superfund cleanups is needed.

Paragraph (a)(2) states that the purpose of CERCLA's new section 117 is both to establish within the Environment Protection Agency a research and demonstration program for alternative and innovative treatment technologies that can be used in Superfund remedial actions and to provide incentives for the development and use of such technologies. The Committee believes that a sustained program of research and demonstration of alternative and innovative treatment technologies is most appropriately located at the EPA. Putting the program at EPA takes advantage of EPA's existing expertise and established contract and grant procedures, with minimal additional burden and cost. EPA is the agency charged by Congress with the duty to clean up the nation's hazardous waste sites.

Subsection (b) of the bill's section 117 amends Title I of CERCLA by adding new section 117 establishing an alternative and innovative treatment technology research, evaluation, and demonstration program.

Subsection (a) of new section 117 directs the Administrator of EPA to carry out a program of research, evaluation, testing, development and demonstration of alternative or innovative treatment technologies to be used in remedial actions under the Superfund program and to achieve more permanent protection of human health and the environment.

While new section 117 specifies certain components to be included in the program, such as the technology transfer activities and field demonstrations, new section 117 largely grants the Administrator discretion in the direction and development of the research and demonstration program. To ensure a sound scientific basis as well as the application of the research results to actual cleanup activities, it is anticipated that both the Office of Research and Development and the Office of Emergency and Remedial Response would be involved with the program.

While the primary purpose of the program is to foster the development of alternative and innovative treatment technologies that can be used in remedial actions under Superfund, ancillary research needed to design, implement, or evaluate demonstrations of such technologies, such as site characterization, monitoring, and ecosystem damage assessment, would be appropriate activities under new section 117.

Subsection (b) of CERCLA's new section 117 requires the Administrator to carry out, as a part of the overall program, technology transfer activities. Subsection (b) requires the Administrator to collect, evaluate, coordinate, and disseminate information relating to the use of alternative or innovative treatment technologies. As part of the information collection, the Administrator should collect and maintain data obtained from field demonstrations required under subsection (f) relating to the cost, efficacy, and safety of the alternative or innovative treatment technologies that were demonstrated. These technology transfer activities play an intergral role in the development of new technologies by the private sector.

Information collected and maintained by the Administrator pursuant to subection (b) is required to be made available to the public under the provisions of the Freedom of Information Act. Trade secrets and other proprietary information are protected from public disclosure by the provision of procedures to petition the Administrator. These procedures are intended to balance the need for public disclosure against a firm's need to protect commercially valuable trade secrets. In the same manner, subsection (b) makes no distinction between technologies which are proprietary and those which are not.

Finally, the subsection requires that none of its provisions are to be construed as authorizing the withholding of information from Congress or any Congressional committee.

Subsection (c) states that the Administrator is authorized to enter into contracts and agreements with, and make grants to, persons, public entities, and nonprofit private entities as defined in paragraph 501(c)(3) of the Internal Revenue Code of 1954. By expanding on the definition of "person" contained in subsection 101(21) of CERCLA, which includes private for-profit firms, the Committee intends to make clear that universities, research centers, State and local governments, and other private nonprofit groups would be eligible to receive funding. Further, the Administrator would be able to support through contracts, agreements, or grants, a program or center to evaluate, test, or certify new technologies. Such a program, which could bring together experts from industry and academia, could also provide direct assistance to the Administrator in carrying out his responsibilities under the bill.

Subsection (c) further provides that each contract, agreement, and grant under new section 117 must contain appropriate cost sharing arrangements.

Subsection (d) states that the Administrator may, if consistent with requirements of new section 117, assist or inform persons, state and local governments and other public entities, and nonprofit entities that wish to have alternative or innovative treatment technologies tested or evaluated for use in remedial activities. Concerns have been raised related to the difficulty of obtaining information and assistance from the EPA in attempting to have new treatment technologies tested or evaluated by the EPA. The OTA Report raised similar concerns and noted that EPA had no procedures for evaluating technologies other than conventional incineration. Paragraph (d)(1) is intended to permit the Administrator to establish procedures by which various parties can be assured of obtaining information and assistance concerning the evaluation or testing of their technologies.

Paragraph (d)(2) provides that the Administrator, in cooperation with the states, may arrange for the use of Superfund sites for research and demonstration purposes, subject to such terms and conditions as the Administrator shall require for the protection of human health and the environment.

Paragraph (d)(3) requires that nothing in new section 117 be construed to affect the provisions of the Solid Waste Disposal Act.

Subsection (e) of new section 117 authorizes the Administrator, in carrying out section 117, to conduct and support various enumerated programs. The Administrator may conduct and support, among other things, research and development and demonstration programs in the following: (1) methods and technologies to detect hazardous substances in the environment and to reduce the amount and toxicity of hazardous substances, including recycling, incineration, biodegradation, chemical inactivation, and encapsulation; (2) site specific demonstrations of innovative technologies applied to all phases of hazardous substances response including, as appropriate, the testing, evaluation, and field demonstration of innovative technologies, processes, equipment, and related devices that can be used for such purposes; and (3) improved safety practices in, and equipment for, the handling and disposal of hazardous substances.

Under subsection (e), the Administrator may also conduct and support training programs for employees who handle hazardous substances so as to teach proper procedures for handling and removal of hazardous substances. In addition, the Administrator may conduct and support programs for state and local health and environment agency personnel to train them to manage facilities where hazardous substances are located and evaluate the hazards to human health presented by such facilities.

Subsection (f) of section 117 requires the Administrator, as part of the overall research and demonstration program, to designate at least ten sites on the National Priority List as appropriate for field demonstrations of alternative or innovative treatment technologies. Within twelve months after the designation of a site, a field demonstration must begin, or cause to begin, a demonstration of alternative or innovative treatment technologies at such site.

In designating any appropriate site, the Administrator must consider certain criteria contained in new section 117. In essence, those criteria include the potential of a field demonstration for contributing to a solution of the most serious hazardous waste threats, the availability of promising technologies ready for field demonstration, the suitability of the sites for such demonstrations, and the likelihood that such demonstrations will generate information which will be applicable to other sites. These criteria were added in response to EPA's concern that any requirement to designate one site in each EPA region would not give the Administrator sufficient flexibility to choose appropriate sites. The Administrator must not designate the sites until notice and an opportunity for public comment have been provided.

Subsection (g) of section 117 authorizes the Administrator to expedite approval of any permit under the Solid Waste Disposal Act for any alternative or innovative technology under new section 117 in order to promote prompt, commercial-scale tests of such technology.

Subsection (h) of new section 117 establishes certain requirements pertaining to liability related to field demonstrations.

Subparagraph (h)(1)(A) provides that notwithstanding H.R. 2817's liability provisions in section 114, no person, public entity, or nonprofit private entity, in the course of conducting a field demonstration pursuant to section 117 is to be liable under (1) Title I of CERCLA, (2) any other Federal law, (3) the law of any state or political subdivision, or (4) common law to any person for injuries, costs, damages, expenses, or other liability (including but not limtied to claims for indemnification or contribution and claims by third parties for dealth, personal injury, illness, loss of or damage to property, or economic loss) which results from a release or threatened release from a facility as a result of such field demonstration.

Subparagraph (h)(1)(B) provides that subparagraph (A)'s exemption from liability is not to apply when a release is caused by the negligent or reckless conduct or intentional misconduct of the person, public entity, or nonprofit private entity conducting a field demonstration.

Subparagraph (h)(1)(C) requires that any person retained or hired, by a person, public entity, or nonprofit private entity conducting a field demonstration pursuant to suction 117, to provide any services relating to such field demonstration will have the same exemption from liability provided to the person, public entity, or nonprofit private entity conducting such field demonstration.

To respond to EPA's concerns and to encourage the use of innovative treatment technologies and field demonstrations, paragraph (h)(1) exempts persons, public entities, and nonprofit private entities conducting field demonstrations from the strict, joint and several liability imposed by CERCLA. Researchers would be liable only for damages caused by their negligence, recklessness, or intentional misconduct. These provisions were borne from testimony that the specter of strict, joint and several liability under the Superfund law was inhibiting the use and development of innovative technologies at Superfund sites. Demonstrations of innovative technologies involve a risk that such technologies might fail to cleanup a site or might even contribute to a worsening of conditions at the site. EPA also expressed concern over the liability faced by researchers conducting demonstrations at Superfund sites under this program. Researchers might be reluctant to conduct field demonstrations if they were likely to face strict, joint and several liability for Superfund cleanup costs as a result of the failed demonstrations, and so the Committee provided the limited exemption contained in subsection (h).

Paragraph (h)(2) provides that nothing in paragraph (h)(1) is to affect liability under CERCLA or under any other authority of Federal or state law of any person other than a person, public entity, or nonprofit private entity conducting a field demonstration pursuant to section 117. In addition, nothing in paragraph (h)(1) is to affect the plaintiff's burden of establishing liability under Title I of CERCLA.

Paragraph (h)(3) states that the exemption provided under paragraph (h)(1) does not apply to any person covered by the provisions of paragraphs (1), (2), (3), or (4) of subsection 107(a) of CERCLA with respect to the release or threatened release concerned if such person would be covered by such provisions even if such person had not carried out the field demonstration actions referred to in paragraph (h)(4) of the bill's section 117.

Paragraph (h)(4) states that for purposes of this subsection a person, public entity, or nonprofit private entity is "conducting a field demonstration pursuant to this section" if such entity or person is carrying out a written contract or agreement with the Administrator, any other Federal agency, a state, or any responsible party, to conduct a demonstration at an NPL site or alternative or innovative treatment technologies as defined in subsection (k) of the bill's new section 117.

Paragraph (h)(5) directs the Administrator, within one year after the date of the enactment of section 117, to transmit to Congress a study of the effects of the standards of liability and financial responsibility requirements imposed by CERCLA on the cost of, and incentives for, developing and demonstrating alternative and innovative treatment technologies.

Subsection (i) of new section 117 requires the Administrator to provide, to the maximum extent practicable, an adequate opportunity for small business participation in the activities authorized under this section. The Committee agrees with the Committee on Science and Technology that many promising innovative and alternative hazardous waste treatment technologies have been, and will continue to be, developed by small, entrepreneurial business firms. Several new technologies developed by small business firms have been identified as showing great promise for future remedial actions. This subsection is intended to capitalize upon the significant potential contributions that small businesses can make in this area.

Paragraph (j)(i) of new section 117 directs the Administrator to submit, when submitting the annual budget request to Congress, a report to the appropriate committees of the House of Representatives and the Senate on the progress of the research, development, and demonstration program under this section. The report must include: (1) evaluation of the demonstration projects undertaken; (2)

findings with respect to the efficacy of such demonstrated technologies in achieving permanent and significant reductions in risk from hazardous substances and pollutants and contaminants; (3) the costs of such demonstrations; and (4) the potential applicability of, and projected costs for, such technologies at other uncontrolled sites.

Paragraph (j)(2) provides that if the total estimated Federal contribution to the cost of any field demonstration project under this section exceeds $5,000,000, the Administrator must provide a full and comprehensive report on the proposed demonstration project to the appropriate committees of the House of Representatives and the Senate. In addition, no funds may be expended for such project under section 117 prior to the expiration of 60 calendar days (not including any day on which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain) from the date on which the Administrator's report on the proposed project is received by such committees. The Committee believes these provisions will help ensure that the limited funds in the program are spent prudently.

Subsection (k) of new section 117 defines, for purposes of this section, the term "alternative and innovative treatment technologies" to mean those technologies that permanently alter the composition of hazardous substances through chemical, biological, or physical means so as to significantly reduce the toxicity, mobility, or volume (or any combination thereof) of the hazardous substances and pollutants and contaminants being treated.

Subsection (l) of new section 117 provides that amounts made available to carry out this section remain available until expended.

Subsection (c) of section 117 in H.R. 2817 amends elements of the National Contingency Plan in subsection 105(a) of CERCLA relating to testing procedures and standards.

Paragraph (1) of subsection (c) amends subsection 105(a) of CERCLA by inserting after paragraph (9) a new paragraph (10) related to standards and testing procedures by which alternative and innovative treatment technologies can be determined to be appropriate for utilization in remedial actions authorized by CERCLA.

Both the OTA Report and testimony from industry representatives underscored the failure of EPA to provide guidance for the evaluation of technologies other than incineration. Firms which would be willing to underwrite the costs of testing and demonstration cannot do so without assurances from the EPA that such tests will provide the data that EPA needs to evaluate the technology. While the Committee understands the difficulty involved in developing test protocols and standards that have general application for alternative or innovative treatment processes, the bill's subsection (c) encourages EPA to give higher priority to developing such protocols and standards by requiring such protocols and standards to be included as part of the National Contingency Plan.

Paragraph (c)(2) provides that nothing in this subsection is intended to alter the authority of the Administrator under section 104 of CERCLA.

Paragraph (d)(1) of the bill's section 117 directs the Administrator, in consultation with the states, to study the feasibility of establishing regional centers that would significantly reduce the volume, toxicity, and mobility of hazardous substances and pollutants and contaminants by treatment, incineration, neutralization, or other means.

Paragraph (d)(2) requires the Administrator to submit to the Congress, within two years of H.R. 2817's enactment, a report on the study's results including any legislative or other recommendations of the Administrator concerning establishment of regional centers.

The Committee believes that these provisions will encourage the development of permanent treatment technologies within EPA's cleanup program and at the same time ensure cooperation among EPA, the states, and Congressional Committees.

Subsection (e) of the bill's section 117 provides that whenever a state siting commission or similar body is designating areas for incinerators of hazardous substances, the commission or body must consider interstate effects of the siting before making any final decision or recommendation.

SECTION 118—UNIVERSITY HAZARDOUS SUBSTANCE RESEARCH CENTERS

This section adds a new section 118 to CERCLA entitled University Hazardous Substance Research Centers. New section 118 establishes regional research centers designed to improve the safety and technology of the manufacture, transportation, use, disposal, and management of hazardous wastes.

The Committee intends for this section to strengthen the current Superfund program by encouraging the development of new disposal technologies and increasing the involvement of universities in Superfund research and training. The Committee recognizes that the current cleanup program suffers because there are only a few commercially available cleanup technologies that are permanently effective. In addition there are not enough qualified and experienced technical people to effectively manage site cleanups. The Committee believes that the money spent annually on hazardous waste cleanups must be augmented by investments designed to increase necessary scientific knowledge and improve effective technology.

New section 118 offers a sensible approach to addressing these needs by making use of an already available, invaluable resource—our Nation's universities. Eligible institutions would receive Federal grants so that they might contribute more meaningfully to hazardous substance research and training. Research performed by universities under authority of section 118 is not intended to duplicate research being performed by EPA and other governmental agencies.

Subsection (a) of section 118 directs the Administrator to make grants to one or more institutions of higher learning to establish and operate one hazardous substance research center in each of EPA's ten Federal regions.

Subsection (b) provides that each hazardous substance research center shall have responsibilities which include, but are not limited to: (1) conducting research and training related to the manufacture, use, transportation, disposal, and management of hazardous substances; and (2) publishing and disseminating results of the research.

Subsection (c) provides that, to apply for and receive grants, institutions of higher learning must submit applications to the Administrator in accordance with regulations promulgated by the Administrator.

Subsection (d) requires that the Administrator select grant recipients on the basis of eight criteria and requirements: (1) the hazardous substance research center must be located in a state that is representative of the Federal region's needs for improved hazardous waste management; (2) the grant recipient must be located in an area that has experienced problems with hazardous substance management; (3) demonstrated research and extension resources are available to the grant recipient for carrying out section 118; (4) the grant recipient is capable of providing leadership in making national and regional contributions to the solution of both long-range and immediate hazardous substance management problems; (5) the grant recipient must make a commitment to support ongoing hazardous substance research programs with budgeted institutional funds of at least $100,000 per year; (6) the grant recipient must have a demonstrated ability to disseminate results of hazardous substance research and educational programs through an interdisciplinary continuing education program; and (8) the proposed projects of the grant recipient are necessary and appropriate. It is the Committee's intent that, by basing his decision on the enumerated criteria and requirements, the Administrator will select the most qualified institutions for carrying out the goals of section 118.

Subsection (e) of section 118 provides that no grant may be made under section 118 in any fiscal year unless the grant recipient and the Administrator enter into an agreement to ensure that the grant recipient will maintain its aggregate research center related expenditures from all other sources at or above the average level of such expenditures in the two fiscal years preceding the date of section 118's enactment.

Subsection (f) provides that the Federal share of a section 118 grant must not exceed 80 percent of the costs of establishing and operating the regional hazardous substance research center and related research activities carried out by the grant recipient.

Subsection (g) vests the Office of the Administrator with the administrative responsibility for carrying out section 118.

Subsection (h) directs the Administrator to allocate funds for carrying out section 118 in an equitable fashion among the Federal regions.

Subsection (i) requires that at least five percent of the Funds for carrying out section 118 for any fiscal year be available to carry out technology transfer activities.

SECTION 119—NATIONAL RESEARCH ADVISORY COUNCIL

CERCLA currently provides for limited health and research related authorities but does not ensure adequate coordination among the parties involved. The Committee recognizes that provisions to improve health assessments, encourage innovative technologies, and establish scientific research centers become meaningless if not accompanied by provisions for necessary planning and coordination.

New section 119 amends CERCLA to require the establishment of a National Research Advisory Council within EPA to provide for greater cooperation among health related agencies and to assist the Administrators of EPA and ATSDR in carrying out the health effects, alternative technology, and university research authorities of CERCLA.

Subsections (a) and (b) of section 119 require the President to establish a National Research Advisory Council in EPA for the purpose of providing assistance to EPA and ATSDR.

Subsection (c) of section 119 requires council membership to consist of representatives from EPA, certain specified health related agencies of the Federal government, industry, academia, state and local government, and local and national hazardous substance organizations. The Assistant Administrator of EPA for the Office of Research and Development must serve as Council Chairman.

Subsection (d) requires each member appointed by the Administrator to serve a five-year term.

Subsection (e) directs the Council to meet at least annually and at other times as designated by the Chairman.

Subsection (f) provides that, subject to subchapter II of chapter 5 of title 5, United States Code, the Council may secure necessary information from any Federal department or agency and, upon request of the Council Chairman, such information must be furnished to the Council.

Subsection (g) directs the Administrator to (1) appoint an Advisory Committee from the membership of the Council to coordinate research and training carried out by grant recipients under new section 118, (2) disseminate results of the research, (3) act as a clearinghouse between hazardous substance research centers and the hazardous substance disposal industry, and (4) review and evaluate programs carried out by the centers. The subsection further directs the Administrator to appoint to the Advisory Committee four officers from EPA representing one of the agency's laboratories, four representatives of state and local govenments, and four representatives of the hazardous waste disposal industry. In appointing members of the Advisory Committee, the President is directed to attempt to maintain a membership balanced in training and experience. The administrator is required to designate the Advisory Committee Chairman.

Subsection (h) expressly exempts the Council and the Advisory Committee from section 14 of the Federal Advisory Committee Act, which relates to termination of advisory committees.

Subsection (i) requires the Council to issue a plan, within one year of the date of enactment of section 119, for the implementation of research under the health authorities, alternative technologies, and university research sections of CERCLA. The plan must include priorities for actions and the research and training relevant to scientific and technological issues which result from site specific hazardous substance response experience. The plan must also consider the development and evaluation of technologies necessary to meet the new cleanup standards required under section 121 of H.R. 2817. Subsection (i) further provides that the Advisory Committee must have an opportunity to review and comment on the plan and assist in the coordination among Council members who represent Federal agencies and institutes.

SECTION 120—FEDERAL FACILITIES

Section 120 of the bill adds a new section 120 to CERCLA relating to Federal facilities.

Subsection (a) of the new section 120 provides that each department, agency and instrumentality of the United States shall be subject to and comply with CERCLA in the same manner and to the same extent as any non-governmental entity, including liability under section 107. All guidelines, rules, regulations, procedures and criteria which are applicable to preliminary assessments carried out under CERCLA for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List or applicable to remedial actions, shall also be applicable with respect to facilities which are owned or operated by a department, agency or instrumentality of the United States in the same manner and to the same extent as they are applicable with respect to other facilities. No department, agency or instrumentality of the United States may adopt or utilize any guidelines, rules, regulations, procedures or criteria which are inconsistent with those established by the Administrator of EPA under CERCLA.

Insofar as the requirements in section 120 relating to applicable time periods and financial responsibility differ from those contained in the other provisions of CERCLA, those included in section 120 are to govern with respect to Federal facilities. Nothing contained in CERCLA is to be construed as requiring a state to comply with the requirements in paragraph 104(c)(3) relating to cost sharing, maintenance, and furnishing of disposal sites.

State laws concerning removal and remedial actions, including state laws regarding enforcement, apply to removal and remedial actions at facilities owned or operated by a department, agency or instrumentality of the United States when those facilities are not included on the National Priorities List.

New subsection (b) requires each department, agency and instrumentality of the United States to add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act information on contamination from each facility owned or operated by the department, agency or instrumentality if the contamination affects contiguous or adjacent property owned by the department, agency or instrumentality or by any other person, including a description of the monitoring data obtained.

New subsection (c) requires the Administrator to establish a special Federal agency hazardous waste compliance docket for each department, agency or instrumentality of the United States. This docket is to contain each of the following:

> The inventory required to be submitted by the department, agency or instrumentality in accordance with section 3016 of the Solid Waste Disposal Act and subsection (b) of this section.

Information submitted by the department, agency or instrumentality under section 3005 or 3010 of the Solid Waste Disposal Act.

Information submitted by the department, agency or instrumentality under section 103 of CERCLA.

The docket established is to be available for public inspection at reasonable times. In addition, the Administrator is to establish a program to provide information to the public with respect to facilities which are included in the docket. Six months after establishment of the docket and every six months thereafter, the Administrator must publish in the Federal Register a list of the Federal facilities which have been included in the docket during the preceding six-month period. This publication is also to indicate where in the appropriate regional office of EPA additional information may be obtained with respect to any facility in the docket.

New subsection (d) provides that not later than January 31, 1987, where the Administrator determines that an evaluation is warranted on the basis of a site inspection or preliminary assessment, the Administrator must evaluate a facility included in the docket in accordance with the criteria established under the National Contingency Plan for determining priorities among releases for inclusion on the National Priorities List. Upon the receipt of a petition from the governor of any state, the Administrator must make such an evaluation of any facility included in the docket. Within twelve months after completion of the evaluation of a facility, the Administrator is required to include the facility on the National Priorities List if the facility meets the criteria for inclusion on the list. These criteria are to be applied in the same manner as they are applied to facilities which are owned or operated by other persons.

New subsection (e) provides that not later than six months after the inclusion of any facility on the National Priorities List the department, agency or instrumentality which owns or operates the facility shall, in consultation with the Administrator, commence a remedial investigation and feasibility study for the facility. In the case of any facility which is listed before the date of the enactment of this section the department, agency or instrumentality which owns or operates the facility shall, in consultation with the Administrator, commence such an investigation and study for the facility within one year after the date of enactment.

The Administrator is to review the results of each investigation and study. Within 180 days thereafter the head of the department, agency or instrumentality concerned must enter into an interagency agreement with the Administration for the expeditious completion by the department, agency, or instrumentality concerned of all necessary remedial action at the facility. Substantial continuous physical on-site remedial action shall be commenced at a facility not later than 15 months after completion of the investigation and study. In order to complete the remedial action as promptly as practicable, each department, agency or instrumentality is directed to request adequate funding in the President's annual budget submittal to the Congress. The interagency agreements are to include, but not be limited to:

A review of alternative remedial actions and selection of a remedial action plan including construction design by the Administration.

A schedule for the completion of each remedial action.

Arrangements for long-term operation and maintenance of the facility.

The concurrence of the state in which the facility is located shall be required for the selection of the remedial action to be carried out at that facility.

Each department, agency or instrumentality responsible for compliance with these provisions must furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. These reports are to include but shall not be limited to:

A report on the progress on reaching interagency agreements.

The specific cost estimates and budgetary proposals involved in each interagency agreement.

A report on progress in conducting investigations and studies.

A report on progress in conducting remedial actions.

New subsection (f) provides that, except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred to any other officer or employee of the United States or to any other person.

New subsection (g) provides that whenever any department, agency or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any Federally-regulated hazardous substance was stored for one year or more, know to have been released, or disposed of, the head of that department, agency or instrumentality must include in the contract notice of the type and quantity of such hazardous substance and notice of the time at which the storage, release or disposal took place. This provision takes effect six months after the effective date of regulations promulgated by the Administrator setting forth the form and manner for the provision of notice under this subsection. As promptly as practicable after the date of enactment, but not later than 18 months after such date, and after consultation with the Administrator of the General Service Administration, the Administrator of EPA must promulgate regulations regarding the notice required to be provided under this subsection.

In the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of the property by the United States to any other person or entity shall contain:

A notice of the type and quantity of the hazardous substances,

Notice of the time at which the storage, release or disposal took place,

A description of the remedial action taken, if any, and

A covenant warranting that all remedial action necessary to protect human health and the environment with respect to any hazardous substance remaining on the property has been taken before the date of the transfer, and any additional remedial action found to be necessary after the date of the transfer will be conducted by the United States.

New subsection (h) provides that nothing in this section shall effect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirements of the Solid Waste Disposal Act.

New subsection (i) provides that a state may request and be granted by the Administrator the role of the on-scene coordinator for Federal facility projects within the state's boundaries. EPA must pay to the state the necessary and reasonable expenses incurred by the state.

SECTION 121—CLEANUP STANDARDS

This section adds a new section 121 to CERCLA establishing cleanup standards for response actions undertaken with respect to a release or threatened release into the environment of any hazardous substance or pollutant or contaminant.

New subsection 121(a) states that as a basic requirement the Administrator must select appropriate cost-effective remedial actions to be carried out under section 104 or secured under section 106. These actions are to be in accordance with the National Contingency Plan, must be in accordance with the requirements of section 121 relating to cleanup standards and must require that level or standard of control of each hazardous substance or pollutant or contaminant at the facility which is necessary to protect human health and the environment.

New subsection (b) provides that if a permanent solution meets the requirements set forth in subsection (a) with respect to a facility, and the solution is feasible and achievable, the Administrator must, to the maximum extent practicable, select the permanent solution as the remedial action for the facility. Permanent solutions consist of those which destroy or neutralize a hazardous substance or assure that it will not be released into the environment in such a manner as to have any adverse effect on public health or the environment. The Administrator shall determine whether or not a solution or remedial action is practicable by taking into consideration, among other factors, the availability of technology, the installation period, the uncertainties related to the level of performance of the solution or remedial action, the level of public support for the solution or remedial action, and whether or not the solution or remedial action has been achieved in practice at any other facility or site which has characteristics similar to the facility or site concerned.

New subsection (c) provides that if the Administrator determines that a permanent solution is not feasible and achievable with respect to a release or a threatened release of a hazardous substance or pollutant or contaminant, he must provide such containment and other interim measures as he deems necessary to protect human health and the environment, during an interim period, until a permanent solution becomes feasible and achievable. The interim measures are to provide the maximum level of control of the hazardous substance or pollutant or contaminant which the Administrator determines to be feasible and achievable.

If the Administrator determines that a permanent solution is not feasible and achievable he is to encourage remedial actions in which hazardous substances and pollutants and contaminants are securely contained in such above ground engineered structures as the Administrator deems necessary to protect human health and the environment during an interim period until a permanent solution becomes feasible and achievable. The Committee notes that use of above-ground engineered structures is only one of many alternatives to be considered by the Administrator in selecting interim remedial actions necessary to protect human health and the environment when a permanent solution is not feasible and achievable. Depending on the circumstances present, interim solutions could range from isolation of hazardous substances, contaminants or pollutants through such measures as fencing and prevention of access, to the stabilization of hazardous substances or pollutants or contaminants through measures designed to prevent or minimize their movement into goundwater, soil, surface water, or air. The provision requiring encouragement of the use of above-ground structures is not to be interpreted as a prohibition of other solutions.

The Committee understands that permanent solutions are technically achievable with regard to most if not all hazardous substances, pollutants or contaminants. However, in many cases these permanent solutions could be prohibitively expensive. In such a situation it is not in the best interests of the program to pursue permanent solutions no matter what the cost. To do so would unduly diminish the Fund, and would also diminish, because of high costs, those cleanup actions which responsible parties are willing or able to undertake. The Committee has therefore adopted the concept that, where a permanent solution is not feasible, achievable and practicable, an interim solution should be selected. This has a number of advantages: it conserves both the resources of the Fund and of the responsible parties; it reduces expenditures for so called permanent solutions which are not in fact permanent; it increases the credibility of the program by recognizing that remedial actions do not provide permanent solutions in all circumstances; and it helps insure that the commitment of both public and private resources toward clean up activities will be both efficient and effective.

Most "cleanup" actions are, in fact, containment actions. Wastes are moved from one site to another, creating the expectation or perception that this constitutes a permanent solution. The Committee feels it is very important for the credibility of this program to acknowledge that many cleanup activities are in fact interim solutions and that further action will be necessary in the years to come.

The ultimate solution to the problem of hazardous wastes consists in neutralizing or destroying them and in encouraging recycling and other neasures which will reduce the incidence of hazardous waste production in the first place. Doing anything else in the guise of permanent solution does nothing but postpone problems which must be addressed by future generations. One of the great dangers in the Superfund program is that so called permanent solutions will be undertaken only to result in further and probably much more expensive actions to be undertaken at a later date. By providing an interim category, the legislation recognizes the problems involved and provides a mechanism to insure that solutions considered permanent are in fact permanent and that measures which are not permanent are properly classified as interim with necessary safeguards to provide that public health and the environment are not damaged.

New subsection (d) provides that, whenever a determination is made that a permanent solution is not feasible and achievable with respect to a release at any site or facility, the site or facility is to be placed in a separate category on the National Priorities List labeled "interim category". The Administrator is to review each site or facility in the interim category on the National Priorities list within five years following its placement in this category and at subsequent intervals of 10 and 15 years after this placement. This review is to include:

> A determination whether the interim measures taken with respect to such site of facility are adequately protecting human health and the environment.
>
> A determination whether a permanent solution is feasible and achievable at the site or facility at the time of the review.
>
> A determination whether additional interim measures are feasible and achievable at the site or facility at the time of the review.

If the Administrator determines that interim measures taken for any site or facility are not protecting health and the environment and that a permanent solution is not feasible and achievable. Then he shall to the maximum extent practicable undertake such additional interim measures as are feasible and achievable.

In determining whether a permanent solution is feasible and achievable under this subsection, the Administrator is to apply the concept of practicability set forth in subsection (b) of section 121.

New subsection (e) provides that in evaluating alternative remedial actions (including whether to utilize onsite or offsite remedial actions) the Administrator is to specifically assess the long term effectiveness of various alternatives including an assessment of permanent solutions and alternative treatment technologies and resource recovery technologies that in whole or in part will result in a permanent and significant decrease in the toxicity, mobility or volume of the hazardous substance, pollutant or contaminant taking into account the following:

> The long term uncertainties associated with land disposal.
>
> The goals, objectives, and requirements of the Solid Waste Disposal Act.
>
> The persistence, degradability in nature, toxicity, mobility and propensity to bioaccumulation of the hazardous substances and their constituents.
>
> The potential threat to human health and the environment associated with excavation, transportation and redisposal.

Short and long term potential for adverse health effects from human exposure.

Long-term maintenance costs.

New subsection (f) provides that remedial actions which significantly reduce the volume, toxicity, or mobility of the hazardous substance or pollutant or contaiminant are to be preferred over remedial actions which do not result in such reductions.

New subsection (g) sets forth the cleanup standards applicable to onsite remedial actions—activities involving hazardous substances and pollutants and contaminants which remain on the site.

If any standard under one or more provisions of the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Federal Water Pollution Control Act, or the Solid Waste Disposal Act, or water quality criteria under any provision of the Federal Water Pollution Control Act, is applicable to the hazardous substance or pollutant or contaminant concerned and is relevant and appropriate under the circumstances presented by the release or threatened release of the hazardous substance or pollutant or contaminant, the remedial action selected under section 104 or secured under section 106 must require a level or standard of control for such hazardous substance or pollutant or contaminant which is equivalent to whichever of the applicable relevant and appropriate standards or criteria the Administrator determines to be most stringent. The term "applicable" means that the substance involved is subject to regulation under one of the other acts even though those acts do not apply directly to the situation involved at the hazardous waste site. The term "relevant and appropriate" involves a judgment as to whether the standards or level of control under a particular act such as the Federal Water Pollution Control Act or the Safe Drinking Water Act reasonably should, in the circumstances presented at the hazardous waste site, be applied. The test is whether the standard or level of control makes sense under the circumstances. For example, a hazardous waste site may have polluted groundwater with arsenic. There is no comprehensive Federal law relating to contamination of groundwater. However, in this instance Federal environmental laws such as the Water Pollution Control Act would have standards for the concentration of arsenic which could be discharged into navigable waters. That law therefore would be applicable because it applies to the particular substance involved.

The next step would be to determine whether the standard in the Federal Water Pollution Control Act or a similar standard under other environmental acts was relevant and appropriate. If both were, then the more stringent of the two would have to be selected. If an aquifer, for example, supplies the drinking water for a community, EPA would have to determine whether a standard under the Federal Water Pollution Control Act or the Safe Drinking Water Act or other environmental statute would be appropriate to apply under the circumstances. In the end it would come down to a determination of whether a standard under the Safe Drinking Water Act or the Federal Water Pollution Control Act is considered to be relevant and appropriate with regard to possible groundwater contamination at these sites.

If drinking water were drawn from the aquifer with no further treatment, then the Safe Drinking Water Act standard would probably be relevant and appropriate. These acts need not be legally applicable. The Administrator is to look to the standards in all of the acts which apply to a particular release or a threatened release and determine whether or not application of the standards in the other acts is reasonable and sensible under the circumstances. In determining whether a standard or criterion established under any other Federal or state environmental statute is applicable to cleanup of a facility subject to a remedial action, the Committee does not intend that such standard or criterion should only be applied where the jurisdictional or procedural requirements of such laws are technically met. For example, the regulatory requirements of the SDWA apply only to certain specific sources of public drinking water. The Federal Water Pollution Control Act contains similar procedural restrictions. Nevertheless, the Committee intends that all standards and criteria developed under both statutes shall apply to Superfund response actions when the bodies of water at issue will be used for similar purposes as those identified in the Safe Drinking Water Act, or the Federal Water Pollution Control Act, or where such bodies of water present similar opportunities for human exposure and adverse effects on human health or the environment as are presented by the environmental media regulated under the other statutes.

Subsection (g) also deals with state standards for cleanup. If the Administrator determines that a standard under a state environmental law is applicable to the hazardous substance or pollutant or contaminant concerned and is relevant and appropriate under the circumstances presented by the release or threatened release of a hazardous substance or pollutant or contaminant and is more stringent than the most stringent Federal standard under section 121 of CERCLA, and there is a cost effective remedial action which will achieve the state standard and is feasible and achievable, then the Administrator must select that remedial action which conforms to the higher state standard if the state agrees to such standard and to comply with the requirements of the subsection.

If a more stringent state standard is applied in a case of a remedial action where the costs are being paid in whole or in part from the Fund. The Administrator shall determine the amount by which the costs of the remedial action achieving this standard exceed the costs that would have been incurred for remedial action if the Federal standard had been used. In such a case, the state must pay 100 percent of the excess that is attributable to the higher state standard. If these costs are not inconsistent with the National Contingency Plan, the state may recover the additional amount paid from responsible parties in an action under section 107 of the Act.

Where the remedial action selected at any facility does not include the removal of all hazardous substances and pollutants and contaminants from the facility, any remedial action providing for the containment of the substances or pollutants or contaminants at the facility must comply with the standards applicable to facilities required to obtain permits under section 3005 of the Solid Waste Disposal Act.

The level or standard of control required shall be required only regarding remedial actions taken with respect to the release or threatened release of a hazardous substance or pollutant or contaminant from the facility concerned and shall not be applicable to contamination from other sources.

New subsection (h) states the cleanup standards applicable to offsite response actions, which involve the transfer of any hazardous substance or pollutant or contaminant offsite. In such an offsite action, with one exception, the hazardous substance or pollutant or contaminant may only be transferred to a facility which is operating in compliance with sections 3004, 3005 of the Solid Waste Disposal Act. They may be transferred to a land disposal facility only if the facility is operating in compliance with sections 3004, 3005 of the Solid Waste Disposal Act and only if the Administrator determines that the facility is not releasing hazardous waste or constituents thereof into the groundwater or surface water. However, if the Administrator determines that there is not reasonably available a facility complying with sections 3004 and 3005 of the Solid Waste Disposal Act and any hazardous substance or pollutant or contaminant at the site if left in place poses an imminent and substantial endangerment to human health and the environment, then a removal or remedial action may involve the transfer of a hazardous substance or pollutant or contaminant offsite to a land disposal facility from which releases into the groundwater and surface water are being controlled by a corrective action program approved by the Administrator.

The Administrator should ensure that whenever any hazardous substance, pollutant or contaminant is being transferred to a land disposal or storage facility, such substance, pollutant or contaminant will be transferred, wherever possible, to a facility which is not releasing hazardous waste or constituents thereof into the groundwater or surface water. If there is no reasonable available facility which is not releasing hazardous wastes or constituents and the hazardous substance or pollutant or contaminant poses an imminent and substantial endangerment to human health at the facility subject to the remedial action, then the Administrator shall provide for a transfer of such hazardous substance or pollutant or contaminant to a land disposal facility from which all releases into the groundwater or surface water are being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act. The Committee intends that such corrective action shall actually have been in place and preventing further releases and that, where appropriate, ultimate treatment or removal of hazardous waste constituents at levels that exceed applicable groundwater protection standards be underway.

Nothing in this subsection limits or prevents the Environmental Protection Agency from using any of its statutory authorities, including sections 3004(u) or 3008(h) of the Solid Waste Disposal Act, to address releases to air, surface water, groundwater or soils.

The Administrator may waive the cleanup standards in subsection (g) with respect to any facility, and select alternative remedial or abatement actions which do not comply with these requirements, if the Administrator makes any of the following findings:

> The alternative remedial action or abatement action will provide protection of human health and the environment substantially equivalent to the remedial or abatement action which would be necessary to comply with such requirements.
>
> Compliance with the requirements of subsection (g) at the facility will result in greater risk to human health and the environment than alternative options (based on a quantitative assessment to the maximum extent possible).
>
> Compliance with the requirements of subsection (g) is technically impracticable from an engineering perspective.
>
> Compliance with such requirements at the facility will consume a disproportionate share of the Fund.

Waivers under this subsection, other than the "Fund balancing" provision in paragraph 4, may also be made with respect to remedial actions financed in whole or part by private parties. The Fund balancing waiver may not be granted with respect to remedial actions financed in whole or or in part by private parties. A waiver may not be granted under this subsection if the granting of such a waiver would result in a violation of any other provision of Federal law. For example, a waiver could not be granted if it would result in a violation of the Federal Water Pollution Control Act because of discharges into navigable waters or the Clean Air Act because of discharges into the air and the like. However, where there is a discharge which is not legally subject to the limitations in the Federal Water Pollution Control Act or other acts under the terms of those Acts, the prohibition would not be applicable. The purpose of this provision is to insure that any cleanup activities at a site do not result in a violation of other Federal laws. If, for example, a standard or level or control in the Federal Water Pollution Control Act is applicable, relevant and appropriate under subsection (g), it may be waived so long as a discharge of a pollutant into navigable waters without a permit or not in compliance with a permit, is not involved.

The Committee's intent in creating the first waiver was to allow the Administrator to authorize the use of alternative technologies where, for example, applicable standards set under other environmental laws are based on specific technologies. The Committee did not intend the waiver to be used as a justification for allowing a remedial action that provides a lower standard or of protection for human health and the environment. When a waiver is granted under this provision, the remedial action should utilize an alternative technology that provides substantially the same level of protection of human health and the environment.

The Committee's intent in creating the fourth waiver was to allow the Administrator to use a lower standard of protection of human health and the environment than would be achieved under standards or criteria established in other environmental laws. This waiver is intended to be used only in the extraordinary circumstances where the fund resources may be seriously depleted.

New subsection (j) provides that no permit shall be required under Federal law, other than the Clean Air Act and the Federal Water Pollution Control Act, for any response action undertaken by any person under section 104 or 106 of CERCLA, at any facility to the extent that the action does not involve the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to another facility. Also no permit shall be required under state or local law for any response action undertaken under section 104 or 106 at the facility at which release or threatened release occurred. Nothing in this subsection is to apply to any action undertaken pursuant to the act at a facility which is owned or operated by a department, agency or instrumentality of the United States. Also, nothing in this subsection or in any other provision of CERCLA shall preempt or otherwise affect the application of any Federal or state law. including anypermanent requirement, to any response action undertaken at such a facility.

Prior to commencement of a remedial investigation and a feasibility study, the Administrator is to notify the state of this action. If, within 60 days, the state notifies the Administrator of any state procedural requirements which would be applicable under state statutes requiring preparation of environmental impact statements, the Administrator shall in consultation with the state establish functionally equivalent procedures governing the preparation of such investigation and study which adopt the state requirements unless the state waives these requirements. Nothing in this provisin is to be construed as diminishing the procedural protections of the National Environmental Policy Act of 1969.

If one or more state or Federal permits are required for any response action the Administrator is to consolidate the procedures, including any requirements for public participation, of such permits with the procedures under this Act.

New subsection (k) provides that with respect to any remedial action involving a hazardous substance or pollutant or contaminant containing chlorinated or halogenated dioxins or chlorinated or halogenated dibenzofurans, the Administrator shall, to the maximum extent practicable, provide treatment technology that provides each of the following:

> A destruction and removal efficiency meeting or exceeding 99.9999 percent.
>
> A treatment process which minimizes accidental emissions of chlorinated or halogenated dioxins, dibenzofurans and other highly toxic materials to the environment.
>
> Protection against emissions of any hazardous substance or pollutant or contaminant into the air during normal operation and equivalent protection during nonsteady operations including start-up, shut-down, and power failures.
>
> Protection against secondary formation of halogenated dioxins and dibenzofurans.
>
> These requirements shall not apply if the Administrator determines that and alternative method of treatment or disposal provides comparable or greater protection of human health and the enviroment, or there will be no human exposure to the hazardous substance or pollutant or contaminant containing chlorinated or halogenated dioxins or chlorinated or halogenated dibenzofurans.

In any evaluation of the cost effectiveness of a response action the Administrator is directed to require value engineering review. This review shall be required for any response action to be carried out under CERCLA by the United States, a state or a political subdivision. In the cost of the response action including the cost of removal and construction related to hazardous substances and pollutants and contaminants is projected to exceed $4 million.

In a rate on contaminated soil that is in a residential area and it the subject of a remedial action shall be disposed of at a facility licensed by the Nuclear Regulatory Commission or by a state pursuant to an agreement under the Atomic Energy Act of 1954 for the land disposal of law level radioactive waste. Any such remedial action which has been started or for which a draft remedial investigation and feasibility study has been issued before the date of enactment of this subsection shall be completed as soon as is practicable after that date.

SECTION 122—SETTLEMENTS

This section creates a new section 122 of CERCLA entitled Settlements.

The Committee recognizes that Fund-financed cleanups, administrative action and litigation—even under a strong and vigorous enforcement program—will not be sufficient to accomplish CERCLA's goals. Voluntary cleanups are essential to a successful program for cleanup of the Nation's hazardous substance pollution problem. This new section 122 is intended to encourage and establish procedures and protections pertaining to negotiated private party cleanup of hazardous substances where such cleanup is in the public interest. In keeping with this goal, section 122 provides the Administrator with the authority, under certain circumstances, to enter into agreements which will limit potentially responsible parties' future liability for unknown conditions at the facility to the percentage of liability for which they have settled. In addition the Administration is authorized to use the Fund to pay for "orphan shares" under certain circumstances. Significantly, the Administrator is never required to use these authorities and can never be compelled to use these authorites. Nevertheless, when parties agree to do or pay for 80 percent of the cost of cleanup, the Administrator may agree to pay for the orphan share and to limit the parties' future liability.

Subsection (a) authorizes the Administrator to enter into a settlement agreement with any person to perform an action described in section 104 or in section 106 of CERCLA when the Administrator determines that the action will be done properly by the agreeing person.

Subsection (b) authorizes the Administrator to enter into "mixed funding" agreements with potentially responsible parties under section 122 whereby the Administrator will reimburse the parties to the agreement from the Fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform but which the Administrator has agreed to finance. The subsection also authorizes the Administrator to retain and use amounts paid to the Administrator pursuant to an agreement by parties to the agreement where the agreement calls for the Administrator to be carrying out some action. In such an instance, any amounts paid may be used by the Administrator for purposes of carrying out the agreement. Finally, subsection (b) provides that the Administrator's decisions regarding the availability of Fund financing under this subsection shall not be subject to judicial review under subsection (e) of section 122.

Subsection (c) authorizes—but does not require—the Administrator to provide limitations of liability in connection with negotiated private party cleanups.

Paragraph (1) of subsection (c) provides that, subject to the provisions of section 122, the Administrator may limit the CERCLA liability of each party to a subsection (a) settlement agreement arising from the release or threatened release that is the subject of the agreement. Generally, any limitation shall extend only to liability relating to conditions known at the time of the agreement. However, paragraph (4), discussed below, provides an exception to the general rule. Nothing in paragraph (1) limits or otherwise affects the authority of any court to review in the consent decree process established in subsection 122(e) any limitation on liability contained in a section 122 settlement agreement.

Paragraph (2) provides that the Administrator may only limit the liability of a person under the preceding paragraph if each of three conditions are met. These conditions are that the limitation would expedite response action consistent with the National Contingency Plan under section 105 of CERCLA, that the person is in full compliance with any consent decree under section 106 for response to the release or threatened release concerned, and that the response action has been approved by the Administrator.

Paragraph (3) provides guidance to the Administrator concerning factors to be considered in limiting liability as part of a section 122 settlement agreement. In determining the extent to which the liability of parties to an agreement will be limited under subsection (c), the Administrator is to be guided by the principle that a more complete limit of liability shall be given for a more permanent remedy proposed and successfully undertaken by the settling parties. The Administrator is also required to consider the following factors in determining whether or not to limit the liability of a person under subsection (c) and the extent of such limitation: (1) the effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned; (2) the nature of the risks remaining at the facility; (3) the extent to which performance standards are included in the order of decree; (4) the extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility; (5) the extent to which the technology used in the response action is demonstrated to be effective and advances the state of the art; and (6) whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.

Paragraph (4) of subsection (c) establishes specific procedures for limitations on future liability and settlements if the cleanup offer, when added to the "orphan share" at the site, equals at least eighty percent of the costs of cleanup. This section supplements the authority for mixed funding under subsection 122(b), which also allows the Fund to contribute to the costs of a private party cleanup in appropriate circumstances.

The incentives authorized in paragraph (c)(4) are intended to encourage responsible parties to work among themselves to develop offers for a substantial portion of the costs of cleanup. The Administrator is encouraged to consider such settlement offers. However, nothing in paragraph (4) or elsewhere in section 122 requires the Administrator to accept such an offer unless he determines that to do so is in the public interest, and the Administrator's determination in this regard is not subject to judicial review. Nor is the Administrator required to make any public determination of the orphan share.

Under subparagraph (c)(4)(A), if the parties to a section 122 agreement agree to pay in the aggregate a portion of response costs which, when added to the portion of response costs determined by the Administrator to be the orphan share, is equal to or greater than 80 percent, (1) any future liability of a party to the agreement arising from conditions at such facility not known at the time of the agreement shall not exceed the percentage of liability agreed to by such party in the agreement; and (2) the Administrator shall agree to pay from the Fund the orphan share. The Administrator, as a party to the agreement willing to pay any orphan share for purposes of meeting the subparagraph's 80 percent threshold, would have to exercise his discretion and choose to enter into the agreement before being bound to pay the orphan share. The Administrator could, in his discretion, choose not to become a party to the agreement and in such a case would not be required under paragraph (c)(4) to agree to pay from the Fund the orphan share. Once having agreed, however, to become a party to the settlement agreement, the Administrator must also agree to pay the orphan share. The Committee attempted to make as clear as it could in subparagraph (B)'s explicit language that nothing in subparagraph (A) shall be construed as requiring the Administrator to enter into any agreement under section 122.

Subparagraph (c)(4)(C) defines "orphan share" to mean any portion of liability which the Administrator determines to be the responsibility of a party (1) who no longer exists and whose liabilities have not been assumed by another party, or (2) who is not solvent. This definition is not intended to place any limit on the Administrator's authority to use the Fund in other appropriate cases, under the mixed funding provision.

Paragraph (c)(5) establishes within the Hazardous Substances Superfund a separate account to be known as the "Contingency Cleanup Account". Whenever the Administrator determines that to do so would encourage and facilitate a negotiated private party cleanup and section 122 settlement, the Administrator is authorized to require parties whose liability is limited under subsection (c) to pay premiums for future liability related to conditions not known at the time of the section 122 agreement. The amount of premiums paid are to be deposited in the Contingency Cleanup Account. The Administrator may use the amounts placed in the Account only to carry out future remedial action under section 122 with respect to any facilities which are subject to limitations of liability under subsection (c).

Paragraph (c)(6) provides that, if the parties to a section 122 settlement agreement agree to destroy, eliminate, or permanently immobilize the hazardous constituents of the hazardous substances subject to such agreement, the Administrator shall provide a permanent and total release from liability with respect to such release for conditions known at the time of the agreement.

Paragraph (c)(7) makes clear the Committee's intent that any limitation of liability provided to a party under subsection (c) in a section 122 settlement agreement shall be subject to the satisfactory performance by such party of its obligations under such agreement.

Subsection (d) of section 122 provides that, if an agreement has been entered into under section 122, the Administrator may take any action under section 106 of CERCLA against any person who is not a party to the agreement after the period for submitting under subparagraph (e)(2)(B) of section 122 a proposal with respect to the agreement has expired. Subsection (d) further provides that nothing in section 122 shall be construed to affect either (1) the liability of any person under section 106 or 107 of CERCLA with respect to any costs or damages which are not included in the agreement, or (2) the authority of the Administrator to manintan an action under section 106 or 107 against any person who is not a party to the agreement. This subsection is intended to preserve all rights existing under the amended CERCLA of all parties to a section 122 settlement agreement to seek contribution or indemnification from any potentially liable nonsettling party for cleanup costs agreed to in the settlement. Thus, the subsection preserves the Administrator's right, which the Committee intended to be aggressively exercised, to recover Fund-financed settlement cleanup costs—including any orphan shares—from nonsettling potentially responsible parties. The subsection also makes clear that no section 122 agreement or any other provision of section 122 shall affect any person's liability for matters not covered by the agreement.

Subsection (e) of section 122 establishes procedural, public participation, and enforcement requirements pertaining to section 122 settlement agreements.

Subparagraph (e)(1)(A) provides that, whenever a section 122 the Administrator enters into a section 122 settlement agreement with any potentially responsible party with respect to action under section 104(a) or 106 of CERCLA, following approval of the agreement by the Attorney General, the agreement must be entered in the appropriate United States district court as a consent decree. In formulating the terms of an entering the consent decree, the Administrator may, but need not, make any finding regarding an imminent and substantial endangerment to the public health or welfare or the environment. It is intended that removal actions be covered by the consent decree requirement because of the need for a quick response.

Subparagraph (e)(1)(B) provides that the entry of any consent decree under subsection (e) shall not be construed to be an acknowledgement by the parties to the consent decree that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or the environment.

Subparagraph (e)(1)(C) provides the Administrator with specific discretionary authority, where the Administrator chooses to exercise it, to fashion a section 122 consent decree so that (1) the entering of the decree and compliance with it or with any determination or agreement made pursuant to section 122 shall not be considered an admission of liability for any purpose, and (2) the entering of the decree and compliance with it and any section 122 determination or agreement shall not be admissible in any judicial or administrative proceeding.

Subparagraph (e)(1)(C) provides the Administrator with specific discretionary authority, where the Administrator chooses to exercise it, to fashion a section 122 consent decree so that (1) the entering of the decree and compliance with it or with any determination or agreement made pursuant to section 122 shall not be considered an admission of liability for any purpose, and (2) the entering of the decree and compliance with it and any section 122 determination or agreement shall not be admissible in any judicial or administrative proceeding.

Subparagraph (e)(1)(D) estabiishes public participation requirements pertaining to section 122 consent decrees. The subparagraph codifies current Department of Justice consent decree regulations. Except as described below, at least 30 days before a final judgment is entered under subparagraph (e)(1)(A), the proposed judgment must be filed with the court. The Attorney General must provide an opportunity to persons who are not named as parties to the action to comment on the proposed judgment before its entry by the court as a final judgment. Also before the entry of any final judgment by the court, the Attorney General must consider, and file with the court, any written comments, views, or allegations relating to the proposed judgment. The Attorney General may (1) withdraw or withhold its consent to the proposed judgment if the comments, views, and allegations concerning the judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper, or inadequate, or (2) oppose an attempt by any person to intervene in the action. Subparagraph (e)(1)(D), however, authorizes the Attorney General to permit an exception to the subparagraph's requirements where extraordinary circumstances require a period shorter than 30 days or a procedure other than that provided in the subparagraph.

Clause (2) of subparagraph (e)(1)(D) provides that, whenever the Administrator enters into an agreement under section 122 with any potentially responsible party with respect to action under subsection 104(b) of CERCLA, the Administrator shall issue an order setting forth the obligations of the party or parties. The United States district court for the district in which the release or threatened release occurs may enforce the order. Any party to a section 122 agreement who receives such an order and who fails or refuses to comply with its requirements shall be liable for a civil penalty in an amount not to exceed $25,000 for each day during which the failure or refusal continues.

This clause must be read in conjunction with the last sentence of subsection 104(b) of the Committee-reported bill. That sentence prohibits a potentially responsible party from conducting a remedial investigation or feasibility study (RI/FS) related to a release or threatened release for which the potentially responsible party might be liable under section 107 of CERCLA. The Committee recognizes that the Administrator currently allows potentially responsible parties to perform RI/FS's under subsection 104(b) of CERCLA. The Committee is also aware that, in the version of H.R. 2817 reported by the Committee on Energy and Commerce, references in that version to section 104(b) of CERCLA contemplated that potentially responsible parties would be authorized to perform RI/RS's pursuant to agreements with the Administrator. The Committee in Public Works and Transportation, however, determined that RI/FS's should not be performed by potentially responsible parties and therefore included in subsection 104(b) of the bill the prohibition against the performance of RI/FS's by such parties. This prohibition, however, does not preclude potentially responsible parties from performing a number of actions under section 104(b) of CERCLA short of a full remedial investigation and feasibility study. These actions may include a wide range of items undertaken pursuant to an agreement with EPA relating generally to assisting and financing the RI/FS's including monitoring, surveys, testing, other information gathering, and other matters designed to facilitate EPA's activities under subsection 104(b). The Committee recognizes the authority of EPA to contract with potentially responsible parties for these actions under subsection 104(b) in new subsection 113(i), relating to review of the Administrator's selection of a remedy, and in paragraphs 122(f)(2)(B) and 122(f)(3). The language of clause (2) and subsection 104(b) of the bill, read together, make it clear that, while potentially responsible parties are prohibited from conducting RI/FS's, they may provide to the party conducting the RI/FS relevant information derived from monitoring, surveys, testing, and the like described in section 104(b) of CERCLA. Under clause (2), whenever a potentially responsible party provides such information, it must be in accordance with the order described in clause (2).

Subsection (f) of section 122 establishes special procedures regarding the provision of information and time periods for negotiation relative to section 122 settlement agreements.

Paragraph (f)(1) provides that, whenever the administrator determines that a period of negotiation under subsection (f) would facilitate a section 122 settlement with potentially responsible parties for taking action under subsection 104(b) of CERCLA or under section 106 of CERCLA, the Administrator must so notify all known potentially responsible parties and provide them with information concerning; (1) the identify of other notice recipients; (2) the volume and nature of hazardous substances at the facility; to the extent that information is available; and (3) a ranking by volume of the substances at the facility, to the extent that information is available. The Administrator shall make this information available in advance of notice under paragraph (f)(1) upon the request of a potentially responsible party in accordance with procedures provided by the Administrator. The provisions of subsection 104(e) of CERCLA regarding protection of confidential information apply to information provided under this paragraph.

Paragraph (f)(2) provides that, except as provided in subsection (f), the Administrator may not: (1) commence action under subsection 104(a) of CERCLA or take any action under section 106 of CERCLA for 120 days after providing notice and information under subsection (f) with respect to such section, and (2) commence under section 104(b) of CERCLA for 90 days after providing notice and information under this subsection with respect to such RI/FS. Persons receiving notice and information under paragraph (f)(1) with respect to action under section 106 shall have 60 days from the date of receipt of notice to make a proposal to the Administrator for undertaking or financing the action under section 106. Persons receiving notice and information under paragraph (f)(1) with respect to an RI/FS under subsection 104(b) shall have 60 days from the date of receipt of such notice to make a proposal to the Administrator for undertaking—in the sense of participating in or contribution information for—or financing the RI/FS. If an additional potentially responsible party is identified during the negotiation period of after a section 122 settlement agreement has been entered into concerning a release or threatened release, the Administrator may bring the additonal party into the negotiation or enter into a separate agreement with the additional party.

Paragraph (f)(3) provides that, if the Administrator determines that a good-faith proposal for undertaking of financing action under section 106 of CERCLA has not been submitted within 60 days of the provision of notice pursuant to subsection (f), the Administrator may thereafter commence action under subsection 104(a) or take an action against any person under section 106 of CERCLA. If the Administrator determines that a good faith proposal for undertaking—in the sense of participating in or contributing information to—or financing an RI/FS under subsection 104(b) has not been submitted within 60 days of the provision of notice pursuant to subsection (f), the Administrator may thereafter commence the RI/FS under subsection 104(b) of CERCLA.

Paragraph (f)(4) provides that nothing in subsection (f) shall limit the Administrator's authority to undertake response action regarding a significant threat to public health within the negotiation period established by the subsection.

Subsection (g) of section 122 authorizes the Administrator to reach a final settlement with and grant releases of liability to de minimis contributors, even with respect to conditions unknown at the time of settlement. The subsection provides that, notwithstanding any other provision of section 122, in an administrative or civil action under section 106 or section 107 of CERCLA, the Administrator shall, in appropriate cases, reach a final settlement with, and grant a release from liability to, any potentially responsible party in such an action where the settlement does not involve a substantial portion of the response costs at the facility concerned if both of the following are minimal in comparison to other hazardous substances at the facility: (1) the amount of the hazardous substances contributed by that party to the facility, and (2) the toxic or other hazardous effects of the substances contributed by that party to the facility. The Administrator is required to reach any such settlement and grant any such release from liability as soon as possible after the Administrator has available the information necessary to reach such a settlement and grant such a release from liability. Subsection (g) of section 122 also provides that nothing in subsection (g) is to be construed to affect the authority of the Administrator to reach settlements with other potentially responsible parties under CERCLA.

Subsection (g)'s authority to enter into de minimis settlements is intended to extend to any potentially responsible person whose authority to enter into de minimis final settlements and grant releases from liability to eligible potentially responsbile persons.

Subsection (h) of section 122 defines the term "potentially responsible party" for purposes of section 122 to mean, with respect to any release or threatened release, a person against whom an action could be brought under section 106 of CERCLA with respect to such release or a person who would be liable under section 107 of CERCLA if responsible costs were incurred by the Administrator with respect to such release or threatened release.

SECTION 123—PUBLIC PARTICIPATION

CERCLA currently contains few requirements for public participation in decision-making, and what requirements there are occur, indirectly, as the result of rulemaking proceedings mandated pursuant to eleven provisions in the Act.

While existing EPA policy—expressed in program guidance and the National Contingency Plan—does provide opportunity for certain community involvement, more is necessary to continue to restore and improve the effectiveness of the Superfund program.

The Committee is convinced that public confidence in the Superfund program is vital to the program's success. Without a high level of public confidence, no matter how well designed the program is in theory and no matter how technically perfect the basic statute and implementing regulations are, the Superfund program will not achieve its goals.

The Committee believes that increased public participation will in the short term add procedural steps to the decision-making process, but in the long term will expedite cleanup progress and increase public understanding of and support for remedial actions undertaken at Superfund sites.

New section 123 is being added to CERCLA to strengthen and formalize the public participation requirements of the Act.

Subsection (a) requires notification of the public and provision of an opportunity for public comment on proposed remedial actions to be undertaken pursuant to CERCLA. Before any CERCLA remedial action plan pertaining to a site can be adopted, either the Administrator or the state must (1) publish a notice and brief analysis of the proposed plan sufficient to provide a reasonable explanation of the plan, (2) make the proposed plan available to the public, (3) provide a reasonable opportunity for submission of written and oral comments on the plan, and (4) provide a reasonable opportunity for a public meeting at or near the facility to which the plan pertains. Any opportunity for public comment and any opportunity for a public meeting must be structured so as to cover the proposed plan as well as any waivers relating to cleanup standards being considered or proposed under section 121 of H.R. 2817. In addition, subsection (a) requires the Administrator to keep a transcript of any public meeting held pursuant to the subsection and to make the transcript available to the public.

Subsection (b) requires that, before any remedial action commences, notice of the final remedial action plan adopted must be published and the adopted final plan must be made available to the pulbic. The subsection requires that the final plan must be accomplished by a discussion of any significant changes in the proposed plan and the reasons for such changes. Additionally, the final plan must be accompanied by a response to each of the significant comments, criticisms, and new data submitted under subsection (a).

Subsection (c) requires the Administrator to fully explain to the public any significant differences between decisions reached in the final remedial action plan and actions taken after the plan has been adopted. The Administrator must publish a full explanation of any significant differences and the reasons for those differences whenever the remedial action undertaken, any section 106 enforcement action undertaken, or any section 106 settlement or consent decree entered into with respect to the facility differs in any significant respect from the adopted final remedial action plan pertaining to that facility.

Subsection (d) provides that, when used in section 123, the term "publish" requires, at a minimum, publication in a major local newspaper of general criculation. The Committee intends the term to require publication such that, after reasonable effort, as many people as practicable who may be affected by or have an interest in the final remedial action plan can be expected to have been notified.

Subsection (e) is intended to assist the public in acquiring, understanding and evaluating—from a technical perspective—information published pursuant to section 123. The subsection authorizes the Administrator to make technical assistance grants to any group of individuals potentially affected by a release or threatened release for the purpose of enabling the recipient group to be technically assisted in reviewing and assessing data and information prepared by the Administrator with respect to the facility potentially affecting the group and required to be published pursuant to rules promulgated by the Administrator under this subsection. The amount of any grant under this subsection may not exceed $25,000 for a single grant recipient. However, the Administrator may waive this limitation wherever necessary to carry out the purposes of the subsection. Each grant recipient must, as a condition of the grant, contribute at least 20 percent of the total of costs of the expert advice and technical assistance for which the grant is made. As with the $25,000 limitation, the Administrator may waive the 20 percent contribution requirement if the grant recipient demonstrates financial need and the waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one grant may be made under subsection (e) with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.

SECTION 124—RESPONSE ACTION CONTRACTORS

Section 124 of the bill adds a new section 124 to CERCLA relating to response action contractors. Subsection (a) of new section 124 provides that a person who is a response action contractor with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility shall not be liable under CERCLA, under any other Federal law, under the law of any state or political subdivision, or under common law to any person for injuries, costs, damages, expenses or other liability which results from the release or threatened release of the hazardous substance or pollutant or contaminant. When a state is providing a response action and is not doing so under a response action contract with EPA with respect to a release or a threatened release of a hazardous substance or pollutant or contaminant from a facility which the state does not own or operate, the state is not liable under CERCLA with respect to the release or threatened release. These provisions regarding liability of response action contractors and states providing response actions do not apply in the case of a release that is caused by conduct of the response action contractor or state which is negligent or grossly negligent or which constitutes intentional misconduct.

Any person retained or hired by a response action contractor or by a state with respect to release or threatened release to provide any services relating to a response action shall have the same exemption from liability provided to the response action contractor or state as the case may be. Nothing in this section is to affect the liability of any person under any express or implied warranty under Federal, state or common law. This is designed to insure, for example, that a manufacturer's warranty covering equipment employed by a response action contractor or a state remains in effect.

New subsection (b) provides that nothing in this section shall affect the liability of any person, other than a response action contractor or a State, under CERCLA or under any other authority of Federal or state law. Also, nothing in this subsection affects the plaintiff's burden of establishing liability under Title I of CERCLA.

New subsection (c) provides that the Administrator of EPA may agree to hold harmless and indemnify any response action contractor against any liability arising out of the contractor's performance in carrying out response action activities under a response action contract to the extent that the liability exceeds or is not covered by insurance made available at a fair and reasonable price to the contractor, and the liability is not caused by conduct of the contractor which is grossly negligent or which constitutes intentional misconduct.

New subsection (d) provides that the exemption from liability and the authority of the Administrator to offer indemnification does not apply to any person covered by the provisions of paragraphs (1) through (4) of subsection 107(a) with respect to the release or threatened release concerned if that person would be covered by the provisions of section 107 even if the person had not carried out any act to provide any response action under the Act.

New subsection (e) provides that nothing in section 124 shall affect the liability under Title I of CERCLA, or any other Federal or state law, of any person other than a response action contractor.

New subsection (f) defines the terms response action contract and response action contractor.

For the purposes of this section the term "response action contract" is defined as meaning any written contract or agreement entered into by a response action contractor with the Administrator, any other Federal agency, a state or political subdivision which has entered into a contract or cooperative agreement with the Administrator or any potentially responsible party, to provide any response action under the act with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility, or to provide any evaluation planning, engineering surveying and mapping, design, construction, equipment, or any ancillary services thereto for the facility. The term "response action contractor" is defined as meaning any person who enters into a response action contract with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility and is carrying out that contract, and any person who is retained or hired by a response action contractor to provide any services relating to a response action.

New subsection (g) provides that no potential offeror of a bid or proposal for a contract, subcontract, or cooperative agreement to be performed and funded under CERCLA shall be denied the opportunity to compete for such contracts. Response action contractors and subcontractors for program management, construction management, architectural and engineering, surveying and mapping and related services are to be selected in accordance with Title 9 of the Federal Property and Administrative Services Act of 1949.

Under the concept of strict, joint and several liability which is applied to hazardous waste sites, any response action contractor working at that site is potentially liable for all removal and remedial costs associated with a release or threatened release of a hazardous substance from the site. This is so even though the contractor is following the requirements set forth in its agreement with the Administrator, another Federal agency, a state or political subdivision or a potentially responsible party. The imposition of such liability is not appropriate in these cases, and for that reason, section 124 exempts response action contractors from liability. Even with such an exemption, insurance to cover liability arising out of the contractor's performance in carrying out response action activities where the liability is caused by negligence of the contractor either cannot be obtained or is very expensive. New section 124 therefore authorizes the Administrator of EPA to indemnify response action contractors. This authority to indemnify does not apply to liability arising from conduct of the contractor which is grossly negligent or which constitutes intentional misconduct. In addition, the granting of indemnification is discretionary with the Administrator and may apply only to the extent that the liability exceeds or is not covered by insurance made available at a fair and reasonable price to the contractor.

SECTION 125—REIMBURSEMENT TO LOCAL GOVERNMENTS

This section adds a new Section 125 to CERCLA providing for reimbursement to local governments for expenses incurred in carrying out temporary emergency measures. Subsection (a) of new section 125 provides that any general purpose unit of local government for a political subdivision which is affected by a release or a threatened release may apply to the Administrator for reimbursement. New subsection 125(b) provides that the Administrator is authorized to reimburse community authorities for expenses incurred in carrying out temporary emergency measures necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance or pollutant or contaminant. These measures may include, where appropriate, security fencing to limit access, response to fires and explosions, and other measures which require immediate response at the local level. In addition, the Administrator is authorized to reimburse local communities for expenses incurred in carrying out emergency measures for the protection of public drinking water supplies as a result of contamination by the release of any hazardous substance of pollutant or contaminant into existing sources of public drinking water. These measures may include treatment to remove contaminants and other measures which require immediate response at the local level.

New subsection (c) provides that the amount of any reimbursement for temporary emergency measures other than those relating to protection of public drinking water, may not exceed $25,000 for a single response.

New subsection (d) provides that reimbursement shall be in accordance with rules promulgated by the Administrator within one year after the date of enactment.

SECTION 126—LANDFILL GAS OPERATORS

This section adds a new Section 126 to CERCLA. The purpose of section 126 is to clarify that, in order to encourage persons to recover and process methane and similar gases from landfills, certain landfill gas operators are not liable under CERCLA or certain state laws with respect to qualifying landfill gas operations.

The recovery and use of gas—principally methane—created by the decomposition of materials placed in landfills are important both because these gases in a free state are dangerous, and because the captured gases are valuable sources of energy. The biogas mixture resulting from the anaerobic decomposition of landfill waste can migrate long distances and create an explosive atmosphere resulting in personal injury or property damage. The commercial recovery of this gas abates this risk or property damage. The commercial recovery of this gas abates this risk. It can also provide an energy resource estimated by some to be able to grow to as much as 200 billion cubic feet of valuable gas per year or one percent of the United States gas consumption by the year 2000.

Landfill gas recovery also produces significant air quality benefits. Landfills are a major source of hydrocarbon emissions. When these hydrocarbon emissions react with nitrous oxides under sunlight, smog is formed. Substantially reducing these emissions by recovering the landfill gas substantially reduces the smog that would otherwise be caused by the gas.

Despite the recognized energy potential and environmental benefits, however, there are only about forty landfill gas recovery facilities operating in the United States. Companies are reluctant to become involved in the landfill recovery business because a methane recovery system requires the installation of wells and pipes at a landfill which may contain "hazardous substances" under CERLCA's broad definition. At many landfills, the only viable method for disposal of the relatively innocuous aqueous phase of condensate obtained during the methane recovery operation is to recirculate it back to the landfill from which it came. There is concern that operators of methane recovery systems may, by virtue of that fact alone, be considered to be owners or operators of CERCLA facilities, and thereby become potentially liable—under strict, joint and several liability rules—for all environmental harm caused by contaminants placed in the landfill in years past entirely by others. As "deep pockets," many established companies fear being drawn into complex and expensive superfund litigation even if installation of a landfill gas collection or condensate recirculation system is conducted in a proper and environmentally sound manner.

Given the environmental, energy and other public policy benefits, the Committee determined that it is appropriate to amend CERCLA to help promote the increased commercialization of landfill gas recovery.

Subsection (a) of Section 126 provides that a landfill gas operator (except one who is negligent, reckless, or whose actions constitute intentional misconduct) is not liable (1) in an action under Section 106 or 107 of CERCLA—including an action for contribution or indemnification—for any amount with respect to a release or threatened release from a landfill gas operation or resulting from the operation of a landfill gas operation and (2) for costs of cleanup, removal, response and remedial actions, and claims for natural resources damages under the laws of any State or political subdivision which impose liability or requirements with respect to the release of hazardous substances from a landfill gas operation.

Subsection (b) provides that nothing in new Section 126 affects the liability under any other law of any person not a landfill gas operator.

Subsection (c) provides that, if the aqueous or hydrocarbon phase of the condensate or any other waste material removed from gas recovered from a landfill meets any of the characteristics identified under Section 3001 of the Solid Waste Disposal Act, then that condensate phase or other waste material shall be deemed a hazardous waste and regulated under subtitle C of the Solid Waste Disposal Act. Except in this instance, a landfill gas operation shall not be deemed to be management, generation, transportation, treatment, storage, or disposal of any hazardous or liquid waste within the meaning of subtitle C of the Solid Waste Disposal Act. Subsection (c) also provides that condensate removed from gas recovered by a landfill gas operator shall not be returned to the landfill in a container, unless the condensate is treated so that it is no longer a free liquid.

Subsection (d) provides definitions for the terms "landfill gas operation" and "landfill gas operator". The term "landfill gas operation" means the installation or operation of a system solely for the recovery or processing of methane from a landfill (including, but not limited to, recirculation to the landfill of condensate consisting of water and other liquids which do not contain hazardous substances or pollutants or contaminants and which are removed from the gas recovered from the landfill. The term "landfilled gas operator" means the owner or operator of a landfill gas operation.

As discussed above, the paramount purpose of Section 126 is to exempt landfill gas operators from Federal and State-related Superfund liability unless they are negligent. By inserting the phrase "which do not contain hazardous substances or pollutants or contaminants" in describing the recirculation of condensate in Subsection (d)'s definition of "landfill gas operation", the Committee does not intend to thwart this overriding purpose. Rather, the Committee recognizes that the water and other liquids removed from landfill gas and recirculated to the landfill originated in the landfill, and therefore, do not constitute the disposal of newly-derived waste. Therefore, where the prevailing practice and standard of care of the industry has been to return condensate containing limited amounts of hazardous substances, pollutants, or contaminants, the negligence standard would still control. In such a case, the landfill gas operator would not be subject to Superfund liability so long as he was not otherwise negligent, reckless, or quilty of intentional misconduct.

In addition, the word "solely" was added to the definition of "landfill gas operation" so that others would not install landfill recovery equipment merely for the purpose of availing themselves of this exemption. It should be clear, however, that installation of recovery wells and pipes are intented to be included in the definition of "landfill gas operation", and therefore entitled to the protection provided by this amendment.

SECTION 127—SECTION 3001 (b) (3)(A)(i)—WASTE

This section directs the Administrator as expeditiously as practicable to revise the hazard ranking system in effect under the National Contingency Plan with respect to facilities which are not included or proposed for inclusion on the National Priorities List and which contain substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act (fly ash waste, bottom ash waste, sligh waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels). The Administrator's review must assure appropriate consideration of each of the following site specific characteristics:

> The quantity, toxicity, and concentrations of hazardous constituents which are present in the waste and a comparison with other wastes.
>
> The extent of and potential for release of the hazardous constituents into the environment.
>
> The degree of risk to human health and the environment posed by these constituents.

Until the hazard ranking system is revised as required by this section the Administrator may not include on the National Priorities List any facility which contains substantial volumes of waste described in the referenced secton of the Solid Waste Disposal Act on the basis of an evaluation made principally on the volume of such waste and not on the concentrations of the hazardous constituents of the waste. Nothing in this section is to be construed to effect the Administrator's authority to include any such facility on the National Priorities List based on the presence of other substances at the facility or to exercise any other authority of the act with respect to such other substances.

SECTION 128—WORKER PROTECTION STANDARDS

Section 128 of the bill adds a new section 128 to CERCLA relating to worker protection standards. The Secretary of Labor is directed, pursuant to section 6 of the Occupational Safety and Health Act of 1970, to issue within one year after the date of enactment of this bill standards for the health and safety protection of employees including employees of state and local governments engaged in hazardous waste operations. These standards must include as a minimum the following provisions:

> Requirements for a formal hazard analysis of the site and development of a site specific plan for worker protection.
>
> Requirements for contractors to provide initial and routine training of workers before the workers are permitted to engage in hazardous waste operations which would expose them to toxic substances.
>
> A program of regular medical examinations, monitoring and surveillance or workers engaged in hazardous waste operations which would expose them to toxic substances.
>
> Requirements for appropriate personal protective equipment, clothing and respirators for work in hazardous waste operations.
>
> Requirements for engineering controls concerning the use of equipment and exposure of workers engaged in hazardous waste operations.
>
> Requirements for maximum exposure limitations for workers engaged in hazardous waste operations including necessary monitoring and assessment procedures.
>
> A program to inform workers engaged in hazardous waste operations of the nature and degree of toxic exposure likely as a result of the hazardous waste operations.
>
> Requirements for the handling, transporting, labelling and disposing of hazardous wastes.

A program for the introduction of new equipment or technologies that will maintain worker protection.

> Procedures for decontamination.
>
> Requirements for emergency response and protection of workers engaged in hazardous waste operations.

The training standards issued under this section must require that general site workers such as equipment operators, general laborers and other supervised personnel receive a minimum of 40 hours of initial instruction off the site and a minimum of three days of actual field experience under the direct supervision of a trained, experienced supervisor. The training standards must also require that supervisors directly responsible for the hazardous waste operations receive the same training as general site workers. The training standards are to also contain provisions for certification of general site workers and supervisors receiving the specified training and shall prohibit any person who had not received the required training from engaging in hazardous waste operations.

The Secretary of Labor is directed to issue interim final rules under this section within 60 days after the date of enactment. These rules must provide no less protection for workers employed by contractors and emergency response workers than the protections contained in the Environmental Protection Agency Manual (1981) "Health and Safety Requirements for Employees Engaged in Field Activities" and existing standards under the Occupational Safety and Health Act.

The National Institute of Occupational Safety and Health is authorized to make grants for the training and education of workers who are or may be engaged in activities related to hazardous waste removal. The grants are to be awarded to non-profit organizations which demonstrate experience in implementing and operating worker health and safety training and education programs.

Title II—Miscellaneous Provisions

SECTION 201—POST CLOSURE

This section repeals sections 107(k) and 111(j) of CERCLA. Section 107(k) provides that the liability for the owner or operator of a hazardous waste disposal facility which has received a permit under the Solid Waste Disposal Act shall be transferred to and assumed by the Post-Closure Liability Fund. For this provision to apply the facility must have been closed in accordance with regulations and conditions of permits under the Solid Waste Disposal Act, and the surrounding area must have been monitored as required by those regulations and permit conditions for a period not to exceed five years after closure, to demonstrate that there is no substantial likelihood that any migration off-site or release from confinement of any hazardous substance will occur. Section 111(j) of CERCLA provides the authority for the President to use the money in the Post-Closure Liability Fund, with respect to a hazardous waste disposal facility for which liability has transferred to the Fund, for the purposes of payment of any necessary response costs.

The post-closure provisions are repealed for two reasons. One is that very little is collected in the way of revenues to deposit in the Post-Closure Liability Fund. The second and more important reason is that the transfer of the liability of an operator or owner of a hazardous waste disposal facility to the Fund if that facility has performed as required for five years encourages the design of facilities which would only be effective for a limited number of years. In addition, while the owner or operator of such facility would be excused from any liability, those who had disposed of wastes at the facility would be jointly, strictly and severally liable for any release or threatened release of hazardous substances from that facility, resulting in inequitable treatment of these persons.

Subsection (b) of section 201 authorizes the Administrator of the Environmental Protection Agency to conduct a study of options for a program for the management of the liabilities associated with hazardous waste disposal sites after their closure.

Subsection (c) provides that this program is to be designed to assure each of the following:

Incentives are created and maintained for the safe management and disposal of hazardous wastes so as to assure protection of human health and the environment.

Members of the public will have reasonable confidence that hazardous wastes will be managed and disposed of safely, and that resources will be available to address any problem that may arise from the release or off-site migration of hazardous wastes and to cover long term maintenance costs.

Persons who are or seek to become owners and operators of hazardous waste disposal facilities will be able to manage their potential future liabilities and to attract the investment capital necessary to build, operate and close these facilities in a manner which assures protection of public health and the environment.

Subsection (e) provides that In the conduct of this study, the Administrator is to consult with the Secretary of Commerce, the Secretary of the Treasury and the heads of other appropriate Federal agencies.

Subsection (e) provides that in conducting the study, the Administrator is to consider all options which may serve the purposes of the program elements referred to in subsection (c), including each of the following:

Closure requirements and financial responsibility requirements.

Private insurance.

Insurance provided by the Federal government.

Co-insurance, re-insurance or pooled-risk insurance whether provided by the private sector or provided or assisted by the Federal government.

Re-institution of and modifications to the Post-Closure Liability Trust Fund.

Creation of a new program to be administered by a new or existing Federal agency or by a Federally-chartered corporation.

Subsection (f) directs the Administrator to consider options for funding any program under this section and shall to the extent necessary make recommendations to the appropriate committees of Congress for additional authority to implement the program.

SECTION 202—NATURAL RESOURCES ASSESSMENT REGULATIONS

Section 301(c)(1) of CERCLA directs the President, acting through Federal officials desigated by the National Contingency Plan, to study, and not later than two years after the date of enactment of CERCLA, to promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purposes of CERCLA and section 311 of the Federal Water Pollution Control Act. These regulations have not yet been issued. Section 202 of the bill therefore directs that these regulations be promulgated within six months after the date of enactment of the Superfund amendments of 1985.

SECTION 203—TRANSPORTATION OF HAZARDOUS MATERIALS

Section 306 of CERCLA provides that each hazardous substance which is listed or designated as provided in CERCLA shall within ninety days after the date of enactment of CERCLA or at the time of listing or designation, whichever is later, be listed as a hazardous material under the Hazardous Materials Transportation Act. A common or contract carrier is liable under other law in lieu of section 107 of CERCLA for damages or remedial action resulting from the release of a hazardous substance during the course of transportation which commenced prior to the effective date of the listing of the substance as a hazardous material under the Hazardous Materials Transportation Act. Section 203 of the bill amends section 306 by inserting the phrase "and regulated" after the word "listed" each place it appears in subsections (a) and (b) of section 306. This section fills a gap that has developed in the regulation of hazardous substances. Currently, there is no requirement that a shipper inform a transporter that a commodity being tendered for transportation is a hazardous substance unless that substance is regulated pursuant to the Hazardous Materials Transportation Act. As a result, a transporter receiving a hazardous substance might not take precautions that would be taken if the nature of the shipment were known. If a spill occurs, the transporter might be liable for damages caused by the spill even if he was not negligent and could have avoided the damage if he had been informed of the nature of the substance prior to the accident.

SECTION 204—STATE PROCEDURAL REFORM

This section amends CERCLA by adding a new section 309 relating to actions under state law for damages from exposure to hazardous substances.

Subsection (a) of new section 309 provides for a uniform Federally-required commencement date from which state statutes of limitations are measured. In the ease of any action brought under state law for personal injury or property damages which are caused or contributed to by exposure to any hazardous substance or pollutant or contaminant released into the environment from a facility, if the applicable limitations period for the action as specified in the state statute of limitations or under common law provides a commencement date which is earlier than the Federally-required commencement date, the period is to commence at the Federally-required commencement date in lieu of the date specified in the state statute.

Subsection (b) provides that the term "Federally-required commencement date" is defined as meaning the date the plaintiff knew or reasonably should have known that the personal injury referred to was caused or contributed to by the hazardous substance or pollutant or contaminant concerned. This amendment takes affect with respect to actions brought after December 11, 1980.

SECTION 205—CONFORMING AMENDMENT TO FUNDING PROVISIONS

This section contains conforming amendments with respect to the name of the fund (Hazardous Substances Superfund) and adds a cross-reference which states that amounts in the Response Trust Fund shall be available for expenditure only as provided in section 111 of this Act.

SECTION 206—CLEANUP OF PETROLEUM FROM LEAKING UNDERGROUND STORAGE TANKS

Section 206 amends and builds upon the existing regulatory program for underground storage tanks established pursuant to the Solid Waste Disposal Act Amendments of 1984. Pursuant to that Act, EPA s authorized to promulgate regulations concerning leak detection, prevention, and correction for underground storage tanks containing petroleum or a limited category of hazardous substances. Among other things, section 206 expands upon that program by authorizing EPA to take corrective actions or to require the owner or operator of a tank to take necessary corrective action with respect to underground storage tanks containing petroleum where there is an existing or threatened release.

In order to ensure consistent use of the term "petroleum", subsection (a) amends section 9001 to include a definition based on the existing use of the term in section 9001(2) of the Solid Waste Disposal Act (SWDA).

Subsection (b) of section 206 amends section 9003 of the SWDA by establishing a requirement that States provide an inventory of all underground storage tanks located within their borders and an inventory of such tanks from which there is a known or threatened release of petroleum. In developing the inventory, the State is to utilize the notification procedures and forms developed pursuant to section 9002 of the SWDA. The inventories are to be submitted to the Administrator within six months of enactment of the Superfund Amendments of 1985.

Subsection (c) of the section 206 amends section 9003 of the SWDA by adding a new subsection (i) which establishes a new EPA response program for petroleum. Under that program, before the effective date of corrective action regulations called for under paragraph 9003(c)(4) of the SWDA, the Administrator of EPA is authorized to undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if the action is necessary in the judgment of the Administrator, to protect human health and the environment. Alternatively, the Administrator is empowered to require the owner or operator of the underground storage tank to undertake corrective action with respect to any release unless the Administrator finds that action will not be carried out properly by the tank owner or operator.

The standard to be applied in determining the level of control required for corrective actions undertaken or required is that level of control needed to protect human health and the environment. In selecting an appropriate remedy, the Administrator is to consider the same distinctions which are required to be considered in promulgating release detection, prevention, and correction regulations called for under section 9003 of the SWDA. When the Administrator undertakes a necessary corrective action, the costs of the action are to be paid for out of a special Superfund Account established under subsection (e) of Section 206. The Administrator is required to give priority in undertaking corrective actions to cases where the Administrator cannot identify a solvent owner or operator of the tank who will undertake appropriate action.

Following the effective date of corective action regulations under paragraph 9003 (c)(4) of the SWDA, all corrective actions undertaken or required by the Administrator must be in conformity with EPA's corrective action regulations. After the effective date of those regulations, the Administrator is authorized to undertake corrective action if necessary to protect human health and the environment but only if (1) the owner or operator subject to the corrective action regulations cannot be found or is not capable of carrying out necessary corrective action; (2) an emergency situation exists which requires prompt action by the Administrator; or (3) the owner or operator fails or refuses to comply with the Administrator's corrective action order. In undertaking or requiring corrective action, the Administrator is to give priority to releases from underground petroleum storage tanks which pose the greatest threat to human health and the environment.

The Administrator is authorized to use the existing enforcement mechanisms contained in section 9006 of the SWDA to insure compliance with the corrective action requirements called for in the bill. The administrative enforcement mechanisms of section 9006 are also made applicable with respect to any other person who has assumed financial responsibility for an underground storage tank but only in accordance with the terms of the person's financial responsibility agreement. Corrective actions undertaken by the Administrator may include provision for temporary or permanent relocation of residents, for alternative water supplies, and for studies to determine the health effects of a release.

Whenever corrective action costs have been incurred by either the Administrator or a State delegated to act on the Administrator's behalf, the owner or operator of the tank involved is liable to the Administrator or the State—as the case may be—for those costs. The standard of liability established under the bill for recovery of these fund-financed costs is the same standard as provided for under Section 311 of the Clean Water Act. Section 311 of the Clean Water Act establishes a strict liability standard—one that imposes liability without a showing of negligence or willfulness. It has also been interpreted as imposing a joint and several standard of liability—one that calls for each responsible party to share liability equally with all other responsible parties and for each party to be individually liable for all of the cost of cleanup. Section 311 does allow for certain defenses, however, and those defenses would be available under the program established pursuant to section 206.

One of the defenses to an action to recover costs under section 311 of the CWA is that a leak was caused solely by the actions of a third party. Although existing case law speaks of the defense in terms of its availability to owners, it is the intent of the Committee that the defense be available to leaking underground petroleum tank operators as well.

Subsection (c) of section 206 of the bill also provides for limitations of liability for costs of corrective actions incurred by EPA or a delegated State. Six different interim limits of liability are established per corrective action based on the number of tanks involved and the gross assets of the owner or operator. The limits range from one million dollars for a person who operates but does not own a facility with less than eight tanks (for example, a typical service station) to $50 million where the owner or operator has gross assets of over $10 billion. The interim liability limits would not apply where there was willful misconduct or gross negligence or where there was a failure or refusal to provide all reasonable cooperation and assistance requested by a responsible public official in connection with required corrective action activities. Furthermore, the interim liability limits do not in any way affect the liability of any person under authority of any other law for any other costs or damages.

Subsection (c) of section 206 also authorizes the Administrator to establish by regulation classes or categories of underground storage tanks and set limits on liability for these classes or categories lower than the limits prescribed in the bill. The factors which the Administrator is to consider in establishing different classes or categories of tanks or different limits on liability include (1) the size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks; (2) the likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category; (3) the economic impact of the limits on owners and operators of each class, particularly relating to the small business segment of the petroleum marketing industry; (4) the results of studies and actions undertaken in accordance with subsection (g) of section 9003 of the SWDA; and (5) such other factors as the Administrator deems pertinent.

Subsection (c) of section 206 also provides in subparagraph (6) (E) that no indemnification, hold harmless, or similar agreement or conveyance will be effective to transfer liability under the subsection from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under proposed subsection (1) to any other person. Nothing in the subsection, however, would bar any agreement to insure, hold harmless, or indemnify a party to an agreement for any liability under section 9003 of the SWDA. Furthermore, nothing in subsection 9003(i) would bar a cause of action that an owner or operator or any person subject to liability under section 9003, or a guarantor, has or would have against any person. The Committee intends that nothing in subparagraph 206(c)(6)(E) or anywhere else in the bill should be read to indicate Committee support for leases with indemnity clauses which mandate that service station dealers must indemnify their suppliers for tank leak cleanups, regardless of who was actually responsible for the leak.

Paragraph (7) of subsection 206(c) also authorizes delegation of EPA's responsibility for the correction action program. Delegation would be authorized to a State only when the State exercised primary enforcement authority under the SWDA regulatory program for leaking underground tanks and only where the Administrator determines that the State has demonstrated the ability to exercise and enforce the authorities in a manner substantially equivalent to the Federal program. For purposes of funding corrective actions undertaken by a State which has taken over the program, the Administrator is authorized to make grants to the State from the Petroleum Release Account of the Hazardous Substances Superfund. Such grants are to be apportioned among the States applying for grants based on the number of underground petroleum storage tanks which are located in each State, and the number of tanks located in each State from which there is a known or threatened release of petroleum.

Paragraph 206(c)(8) authorizes the Administrator to undertake investigations, monitoring, surveys, testing, and other information gathering to the extend necessary or appropriate to identify (1) the existence and extent of any release or threatened release of petroleum from an underground storage tank; (2) the source of the petroleum involved; and (3) the extent of danger to human health and the environment. In addition, the Administrator is authorized to undertake planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as deemed necessary or appropriate to plan and direct corrective actions, to recover costs, and to enforce the provisions of subsection 9003(i) of the SWDA.

Under paragraph (9) of section 206, where EPA has delegated the responsibility for the correction action program to a State, the Administrator is authorized to provide technical and legal assistance in the administration and enforcement of any contract or subcontract for corrective actions assisted under the subsection 9003(i) and to intervene in any civil action involving the enforcement of such contract or subcontract.

Paragraph (10) of section 206 provides authority for information gathering by any officer, employee, or representative of a State to the extent necessary to ensure an effective corrective action program.

Under paragraph 206(c)(11), any records, reports, or information obtained are required to be made available to the public unless the information is confidential and entitled to protection under section 1905 of title 18 of the United States Code. The bill also calls for compliance with Federal health and safety standards established under subsection 301(f) of CERCLA by contractors and subcontractors engaged in corrective actions. Emergency procurement powers are also authorized.

Section 206 also adds a new subsection (j) to section 9003 of the SWDA which would require EPA to issue interim corrective action regulations under paragraph (c)(4) of section 9003 of the SWDA within 12 months of enactment. Paragraph 9003(c)(4) calls for the Administrator to promulgate final corrective action regulations no later than May 8, 1987, relating to underground petroleum storage tanks. Subsection (j) of section 206 of H.R. 2817 requires that interim regulations be in place within one year of enactment of the bill.

New subsection 9003(j) also requires that the Administrator issue interim financial responsibility regulations within one year of the enactment of the bill. These regulations are to permit each owner or operator of an underground storage tank to assume financial responsibility for responding to any release or threatened release of petroleum from a tank. The regulations must also permit other persons to voluntarily assume financial responsibility for any tank or to provide financial responsibility to the tank owner or operator.

Whenever any person, other than the tank owner or operator, agrees to assume or provide such financial responsibility, he is required to agree to be subject to corrective action and liability requirements under new subsection 9003(i) of the SWDA in accordance with the terms of the financial responsibility agreement. Interim financial responsibility regulations are to continue in effect for an underground storage tank containing petroleum until the financial responsibility regulations under subsection (d) of section 9003 take effect for that tank. Final financial responsibility regulations are scheduled to take effect not later than May 8, 1987. Any person who knowingly omits material information or makes any false or misleading material statement or representation in any certificate or other documentation provided as a demonstration of compliance under new subsection 9003(j) shall, upon conviction, be subject to imprisonment for not to exceed two years or fined in accordance with section 3623 (or 3572 if applicable) of title 18 of the United States Code.

Subsection (d) of section 206 of the bill amends paragraph 9003(d)(2) of the SWDA to give the Administrator greater discretion in selecting acceptable methods for establishing financial responsibility than currently provided for under the 1984 amendments to the SWDA. In addition to insurance, guarantee, surety bond, letter of credit, or qualification or a self-insurer—which are currently authorized under subsection 9003(d)—the Administrator is authorized to select any other method which the Administrator considers to be satisfactory for purposes of demonstrating adequate financial responsibility.

Subsection (e) of section 206 provides for the creation of a special account within the Hazardous Substances Superfund which would be used to pay for the corrective action programs authorized by the section. The Separate Account is to consist of (1) amounts appropriated or transferred to the Separate Account under the Internal Revenue Code of 1954 as provided for inspection 306 of the bill; (2) amounts credited to the Separate Account form interest as provided for under paragraph 223(b)(2) of CERCLA; and (3) amounts recovered from responsible parties pursuant to the liability provisions established under new subsection 9003(i) of the SWDA. Amounts in the Separate Account are authorized to be appropriated for purposes of corrective actions undertaken by the Administrator pursuant to subsection 9003(i) of the SWDA and for purposes of administration and enforcement of the provisions of subsection 9003(h). The amounts are to be available only for those purposes.

Finally, section 206 would require that the Administrator of EPA conduct a study and report back to Congress within nine months on the availability of pollution liability insurance, leak insurance, and contamination insurance for owners and operators of petroleum storage and distribution facilities.

SECTION 207—CITIZEN SUITS

Section 207 of the bill adds a new section 310 to CERCLA providing for citizens suits.

Subsection (a) of this new section provides that any person may commence a civil action on his own behalf in three circumstances.

The first is a suit against any person, including the United States and any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution, who is alleged to be in violation of any requirement which has become effective pursuant to CERCLA. The second situation is a civil action against any person as defined above who has contributed or is contributing to the release or threatened release of any hazardous substance from a hazardous waste disposal site if the release or threatened release may present an imminent and substantial endangerment to public health or the environment. The third instance is an action against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under CERCLA which is not discretionary with the Administrator. Such an action may also be brought against any other department, agency or instrumentality of the United States where there is alleged failure to perform any act or duty under section 120 of this Act relating to Federal facilities which is not discretionary with the department, agency or instrumentality. For purposes of this section, the term hazardous waste disposal site is defined as meaning a site at which disposal of hazardous waste has occurred or is occurring.

Subsection (b) provides that any action against a person alleged to be in violation of CERCLA is to be brought in the District Court for the district in which the alleged violation occurred. Any action to abate the release or threatened release which may present an imminent and substantial endangerment to the public health or the environment shall be brought in the United States District Court for the district in which the release or threatened release occurred or is occurring.

Any action against the Administrator for failure to perform a non-discretionary duty may be brought in the United States District Court for the District of Columbia.

New subsection (c) provides that in actions against any person alleged to be in violation of CERCLA, the District Court shall have jurisdiction to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. With regard to actions brought to abate a release or threatened release of any hazardous substance from a hazardous waste disposal site, the District Court has jurisdiction to immediately restrain any person contributing to the endangerment, and to order the person to take such other actions as may be necessary to protect human health and the environment or both. In the case of actions against the Administrator or another Federal department or agency where there is an alleged failure to perform a nondiscretionary duty, the District Court has jurisdiction to order the Administrator or other department, agency or instrumentality to perform the act or duty concerned.

Subsection (d) provides that no action may be commenced against a person alleged to be in violation of any requirement of CERCLA or who has contributed or is contributing to the release or threatened release of any hazardous substance from a hazardous waste disposal site prior to 60 days after the plaintiff has given notice of the violation or release or threatened release to the Administrator, to the state in which the alleged violation or release or threatened release occurs, and to any alleged violator or person who contributed or is contributing to the release or threatened release. No action may be commenced against any person alleged to be in violation of a requirement of CERCLA if the Administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under CERCLA with respect to the violation of the requirement. With regard to actions against a person contributing to the release or threatened release of any hazardous substance from a hazardous waste disposal site, no action may be commenced with respect to the endangerment if the Administrator has commenced and is diligently pursuing an administrative order or civil action, or prosecuting an action in court under section 106 of CERCLA, or under section 7003 of the Solid Waste Disposal Act, with respect to such endangerment; is actually engaging in a removal action under section 104 of CERCLA with respect to the endangerment; has incurred costs to initiate a remedial investigation and feasibility study and is diligently proceeding with a remedial action under CERCLA; or has obtained a court order under which any responsible party is diligently conducting a remedial investigation and feasibility study, conducting a removal action, or proceeding with a remedial action.

No action may be commenced by any person other than a state against a person contributing to the release or threatened release of a hazardous substance from a hazardous waste disposal site if the State has commenced and is diligently prosecuting an action with respect to the endangerment, is actually engaging in a removal action with respect to the endangerment, or has incurred costs to initiate a remedial investigation and feasibility study under CERCLA and is diligently proceeding with a remedial action.

Only a person who has an interest which is or may be adversely affected may bring an action to abate a release or threatened release from a hazardous waste disposal site.

New subsection (e) provides that no action may be commenced against the Administrator or another Federal agency where there is alleged a failure to perform a nondiscretionary duty prior to the 60th day following the date on which the plaintiff gives notice to the Administrator or other department, agency or instrumentality that the plaintiff will commence the action.

New subsection (f) provides that a court, in issuing any final order in any action brought pursuant to new section 310, may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal rules of civil procedure.

New subsection (g) provides that nothing in CERCLA shall restrict or expand any right which any person may have under any Federal or State statute or common law to seek enforcement of any standard or requirement relating to hazardous substances or to seek any other relief.

New subsection (h) provides that in any action under this section, the United States, if not a party may intervene as a matter of right.

In an action against a person contributing to the release or threatened release of a hazardous substance from a hazardous waste disposal site it shall be a defense that the release referred to is a Federally-permitted release. For purposes of this provision the term "Federally-permitted release" has the meaning given by section 101(10) of CERCLA except that it does not include discharges from a point source which are identified in a permit application (but not in a permit) under section 402 of the Federal Water Pollution Control Act. This addresses a situation where a particular substance may be identified in a permit application but is not regulated by the permit itself.

New subsection (j) provides that no action may be brought under new section 310 with respect to any release or a threatened release resulting from the normal application of a pesticide product registered under the Federal Insecticide, Fungicide and Rodenticide Act. However, nothing in this exemption shall affect or modify in any way the obligations or liability of any person under any other provison of state or Federal law for damages, injury or loss resulting from a release of any hazardous substance; for removal or remedial action; or for the costs of removal or remedial action for the hazardous substance.

CERCLA is one of only two Federal environmental laws which does not contain a citizens suit provision. The other is the Federal Insecticide, Fungicide and Rodenticide Act. Citizens suits provisions have been found to be helpful both in encouraging diligent Federal enforcement of environmental statutes and in locating and taking actions against violators of these Acts. Necessary elements of citizens suits provisions, if they are to be effective, include the ability to bring an action against the Federal agency if it is not performing a mandatory duty, an action against a person who is in violation of the Act, and an action to prevent or stop activities which come within the purview of the Act and which present an imminent endangerment to the public health and environment. In the Federal Water Pollution Control Act, for example, only two of these three elements are necessary—an action to compel a nondiscretionary duty and an action to halt a violation of the Act. These two provisions under that Act accomplish the same purposes as the three elements included in new section 310 of CERCLA. The reason for this is that the Federal Water Pollution Control Act prohibits the discharge of any pollutant into a navigable water unless permitted by the Environmental Protection Agency. Hence, a nonpermitted discharge under that Act is a violation of the Act and may be addressed through an action to compel compliance with the Act. CERCLA, however, contains no general prohibition against the release of hazardous substances. In order to obtain the same legal remedies which are available under the Federal Water Pollution Control Act, it is necessary to add the third element which allows a citizen to bring an action to abate a release or threatened release of a hazardous pollutant which is presenting an imminent and substantial endangerment to the public health or the environment.

SECTION 208—INDIAN TRIBES

Section 208 amends CERCLA by adding a new section 129 relating to Indian Tribes.

Subsection (a) of new section 129 defines the term "Indian Tribe" as meaning any Indian Tribe, band, nation or other organized group or community, including any Alaska native village, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The term does not inlcude any Alaska Native regional or village corporation.

New subsection (b) provides that the requirements of section 104(c)(3) for assurances regarding future maintenance and cost sharing are not to apply to remedial actions to be taken in any of the following instances:

Land or water held by an Indian Tribe.

Land or water held by the United States in trust for Indians.

Land or water held by a member of an Indian Tribe if the land or water is subject to a trust restriction on alienation.

Land or water within the borders of an Indian reservation.

In the case of remedial actions to be taken on such lands or waters the Secretary of the Interior is to provide the assurance required by section 104(c)(3) regarding the availability of a hazardous waste disposal facility.

New subsection (c) authorizes the Administrator, if he determines that an Indian Tribe has the capability to carry out any or all of the actions authorized in new section 129, to enter into a contract or cooperative agreement with an Indian Tribe to undertake these actions in accordance with criteria and priorities established pursuant to section 105(2)(8) of the National Contingency Plan, and to be reimbursed from the Fund for reasonable response costs.

If the Administrator enters into a contract or cooperative agreement pursuant to this subsection, and the Indian Tribe fails to comply with any requirements of the contract, the Administrator may, after providing 60 days notice, seek in the appropriate Federal District Court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the Indian Tribe.

New subsection (d) provides that in the case of an injury to, destruction of, or loss of natural resources belonging to, managed by, controlled by, or appertaining to an Indian Tribe, or held in trust for the benefit of the Tribe, or belonging to a member of the Tribe if the resources are subject to a trust restriction on alienation, liability shall be to the Indian Tribe under section 107(a)(4)(C) of CERCLA. However, no liability to an Indian Tribe shall be imposed where the party sought to be charged has demonstrated each of the following:

The damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement or other comparable environmental analysis.

A decision to grant a permit or license authorizes the commitment of natural resources and the facility or project was otherwise operating within the terms of its permit or license.

> In the case of damages occurring pursuant to a Federal permit or license, this provision applies only so long as the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to the Indian Tribe.

The Secretary of the Interior, or the authorized representative of any Indian Tribe, shall act on behalf of the public as trustee of natural resources of the Tribe to recover damages. The sums recovered are to be available for use to restore, rehabilitate or acquire the equivalent of the natural resources by the appropriate agencies of the Indian Tribe. The measure of the damages, however, is not the limited by the sums which can be used to restore or replace the resources. No recovery is permitted under section 107(2)(4)(c) where the damages complained of and the release of a hazardous substance from which the damages resulted have occurred wholly before the date of enactment of CERCLA.

New subsection (e) authorized the Administrator to delegate authority to obligate money in the Fund or to settle claims to officials of an Indian Tribe operating unde a contract or cooperative agreement with the Administrator.

Under new subsection (f), the governing body of an Indian Tribe is to be afforded substantially the same treatment as a state with respect to the provisions of CERCLA with regard to notification of releases, consultation on remedial actions, access to information, health assessments and protection, and roles and responsibilities under the National Contingency Plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the National Priorities list.

SECTION 209—COMMENCEMENT OF DRILLING FLUIDS, ETC. STUDY

This section requires the Administrator of the Environmental Protection Agency to commence the study required under section 8002(m) of the Solid Waste Disposal Act not later than six months after the date of enactment of H.R. 2817. Section 8002(m) directs the Administrator to conduct a study on the adverse effects, if any, of drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas and geothermal energy.

SECTION 210—INSURABILITY STUDY

This section adds a new subsection 310(g) to CERCLA requiring the Comptroller General to appoint a thirteen-member insurability study group to study the insurability of CERCLA liability of hazardous substance generators and facility owners or operators, and of persons liable for personal injury or property damage caused by the release of hazardous substances into the environment. New subsection 301(g) requires the study group to be comprised of one representative of the Comptroller General, two representatives of the Administrator of EPA, four representatives of persons the insurability of whose liability is being studied by the group, two representatives of groups or organizations comprised generally of persons adversely affected by releases or threatened releases of hazardous substances, three representatives of property and casualty insurers, and one representative of reinsurers. The representative of the Comptroller General is to be chairperson of the study group.

As part of this effort, the insurability study group is required to evaluate (1) economic conditions in, and current future outlook for, the commercial market for insurance and reinsurance; (2) current trends in statutory and common law remedies; (3) impacts of possible changes in traditional standards of liability, proof, evidence, and damages on existing statutory and common law remedies; (4) effects of the standard and scope of liability under CERCLA on the underwriting and pricing of insurance coverage; (5) current trends in judicial interpretation and construction of applicable insurance contracts; (6) frequency and severity of a representative sample of claims closed during the calendar year preceding the date of the enactment of this subsection; and (7) other impediments to insurability. A report on the results of the study must be submitted to Congress—with appropriate recommendtions—within 18 months after the date of the enactment of the Superfund Amendments of 1985.

SECTION 211—EMERGENCY RESPONSE, COMMUNITY RIGHT-TO-KNOW

Section 211 amends CERCLA by, among other things, adding a new title on State and local emergency response planning and community right to know, providing for specific authorizations to the Federal Emergency Management Agency, and directing the Administrator of EPA to carry out a pilot program for testing methods of measuring and analyzing toxic emissions.

Subsection (a) of section 211 amends CERCLA by adding at the end a new title, "Title IV—State and Local Coordination of Emergency Response; Community Right to Know". New Title IV provides for, among other things, the establishment of State and local emergency response planning commissions; the issuance of emergency response plans; requirements for basic information and emergency bulletins regarding hazardous chemicals, hazardous substances, and extremely toxic substances; the availability of such information to the public and to health professionals and emergency officials; provisions on the withholding of trade secrets, civil and criminal enforcement penalties, the relationship of State and local law to CERCLA requirements; and definitions and exemptions.

Section 401 of new Title IV provides for the establishment of State emergency response commissions and local emergency response committees.

Subsection (a) of new section 401 provides that the Governor of each State must appoint an emergency response commission or designate as an emergency response commission, an existing emergency response organization, within six months of Title IV's enactment. The commission must appoint a local emergency response committee and then supervise and coordinate its activities. It is the Committee's belief that such statewide commissions, whose primary function will be to oversee and coordinate local efforts, are essential to improving community awareness of and preparedness for hazardous substance emergencies throughout the Nation. Because of the urgent need for State commissions, subsection (a) further provides that, if any State Governor does not designate a commission within the six month period, the Administrator must act as the commission itself until the Governor appoints such a commission, designating political subdivisions and appointing local emergency response committees in his discretion.

Subsection (b) of new section 401 provides that, within six months of its establishment, the State commission must designate political subdivisions or combinations of political subdivisions as emergency response districts and, for each of these districts, appoint a local emergency response committee. The subsection further provides that, pursuant to interstate agreements, emergency response districts may include political subdivisions from more than one State, and the State commission may designate members of an emergency response committee from each State.

Subsection (c) of new section 401 requires a local emergency response committee to include representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, hospital, and transportation personnel; community groups; and, covered operators.

Subsection (d) authorizes a local emergency response committee to elect officers and spokesmen and appoint ad hoc committees of interested citizens, and request assistance of State and local officials, as the committee deems necessary to assist it in carrying out its duties.

Subsection (e) authorizes any State emergency response commission to revise its designations and appointments under subsection (b) with respect to any local emergency response committee as deemed appropriate by the commission.

Subsection 402 of new Title IV requires the submission of a comprehensive emergency response plan by each local emergency committee, details the mandatory contents of each plan, provides for review of the plan by Governors, and requires the Administrator to help develop and implement the plans upon request of local emergency response committees.

Subsection (a) of new section 402 provides that, within two years of Title IV's enactment, each local emergency response committee must complete an emergency response plan designed to minimize the injury to human health and the environment that could result from any hazardous substance emergency arising from activities carried out at any covered facility located in the emergency response district for which the committee is established. The plan must be integrated with existing emergency response plans at the discretion of the committee. Subsection (a) further provides that a covered operator must submit to the local emergency response committee, in addition to the basic information required under section 403 (other than information which may be withheld from disclosure under section 407), any information with respect to a covered facility that the committee may request for purposes of completing the emergency response plan. The committee may revise the plan as necessary to protect human health and the environment.

Subsection (b) of new section 402 lists the minimum requirements of emergency response plans. Each plan must, at a minimum: (1) designate one or more State or local officials whom the covered operator will notify in case of a hazardous substance emergency; (2) designate the names and emergency telephone numbers of personnel employed by the covered operator who should be contacted in case of a hazardous substance emergency; (3) describe measures that should be taken to mitigate and minimize the risks to human health and the environment posed by a hazardous substance emergency; (4) describe a system or method and procedures and communications systems (including alarm and warning systems) to notify members of the affected public of a hazardous substance emergency; (5) describe emergency equipment and facilities in the community and at each facility in the community at which a substantial inventory of a hazardous substance is maintained, and identify the persons responsible for such equipment and facilities; (6) plan for emergency evacuations; as well as evaluating the adequacy of existing transportation facilities to accomplish an evacuation; (7) describe training programs and drill schedules to be used for emergency response planning and preparedness; and (8) evaluate medical, police, health, and firefighting resources available in the event of a hazardous substance emergency and recommend, if appropriate, what additional resources State or local governments should develop.

The Committee believes that plans with these basic, minimum contents will take the critically needed first step in formulating a nationwide program for enhanced community preparedness and emergency response planning.

Subsection (c) of section 402 provides that after completing an emergency response plan for an emergency response district, the local emergency response committee must submit a copy of the plan to the Governor of each State in which the emergency response district is located. The Governor or Governors must review the plan and make recommendations to the local committee on revisions of the plan that may be necessary to ensure coordination of the plan with emergency response plans of other emergency response districts.

The Committee believes that overview by the States' highest official will lead to improved local emergency response plans and more workable statewide programs. The Committee recognizes that without review and coordination, a patchwork of conflicting local plans could develop.

Subection (d) directs the Administrator to help develop and implement emergency response plans when requested to do so by local emergency response committees.

Section 403 of new Title IV establishes basic notification requirements for owners and operators of various facilities at which hazardous chemicals, hazardous substances, or extremely toxic substances are located, stored, or released.

Paragraph (a)(1) of new section 403 requires the owner or operator of any facility at which any hazardous chemical is produced, used, or stored to submit a Material Study Data Sheet (MSDS) for each hazardous chemical. MSDS's are currently required to be prepared and maintained pursuant to OSHA regulations for substances subject to the requirement of Title IV. Under the requirements of OSHA, the MSDS's are required to be submitted to appropriate State and local officials. Under section 403 of the bill, the owner or operator of a covered facility must also submit the MSDS to the Administrator, the appropriate local emergency response committee, and any local and State officials designated by the commitee to receive the MSDS.

Paragraph (a)(2) of new section 403 requires that each owner or operator of a facility who is required to submit a MSDS for a hazardous chemical under paragraph (1) and who supplies the chemical to any other facility owner or operator must furnish the MSDS, and any updated MSDS under paragraph (4), to the other facility owner or operator who is being supplied with the chemical. The initial sheet must be furnished before, or at the time of, the first shipment of the hazardous chemical to the other owner or operator after the date which is six months after Title II's enactment. Any updated sheet must be furnished before, or at the time of, the first shipment of the chemical to the other owner or operator after the MSDS is updated.

Paragraph (a)(3) of new section 403 states that the MSDS requirements of paragraph (1) of this subsection apply only to an owner or operator of a facility who employs more than 10 employees, or produces, uses, or stores more than 1,000 kilograms of a hazardous chemical during any calendar month. For purposes of this paragraph, the term "employee" is not to be construed as including domestic workers or casual laborers employed at a place of residence.

Paragraph (a)(3) further provides that the use of any chemical or mixture in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual is not to be treated as a use of such chemical for purposes of subsection 403(a). In addition, the use of hazardous chemicals for personal, family, or household purposes is not to be treated as a use for purposes of this subsection.

Paragraph (a)(4) of new Section 401 states that initial MSDS's required under subsection 403(a) with respect to a hazardous chemical must be provided before the later of 1 year after the date of Title IV's enactment or three months after the hazardous chemical is first produced, used, or stored at a facility. The MSDS must be revised within three months after discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical which was originally required to be disclosed on the MSDS under this subsection.

Subsection (b) of new section 403 provides, among other things, the basic requirement for submitting hazardous substance reports; a description of the required contents, format, initial filing and updating procedures of the reports; and direction to the Administrator to publish a list of covered hazardous substances, including those substances brought to the Administrator's attention by petitions from any person or local emergency response committee.

Paragraph (b)(1) of new section 403 requires the covered operator with respect to each covered facility to prepare and submit a hazardous substance report to the appropriate local emergency response committee.

Paragraph (b)(2) stipulates what information hazardous substance reports must contain. This information includes the type and approximate amounts of any covered hazardous substance to be found at the facility; a map showing the location at the facility of each such substance stored at the facility; potential routes of human exposure to each substance; symptoms of exposure; appropriate emergency and first aid procedures for spills, fires, explosions, and other releases involving the substance; and emergency telephone numbers for appropriate personnel of the facility's covered operator of the facility.

Paragraph (b)(3) of new section 403 states that initial reports required under this subsection with respect to a covered facility must be provided before the later of 18 months after the date of Title IV's enactment or three months after a facility becomes a covered facility. In addition, the report must be revised within three months following discovery by a covered operator of significant new information concerning an aspect of a covered hazardous substance which was originally required to be disclosed on the hazardous substance.

Paragraph (b)(4) of new section 403 directs the Administrator to publish, within one year of Title IV's enactment a list of hazardous substances and hazardous chemicals determined by the Administrator to have characteristics of volatility, combustibility, reactivity, dispersability, or toxicity such that a release of the substance or chemical would likely cause an imminent and substantial endangerment to health or the environment. The Administrator may periodically revise the list.

Paragraph (b)(4) further provides that any person and any local emergency response committee may petition the Administrator to designate a substance as a covered hazardous substance for purposes of the list. Within six months after receiving a petition, the Administrator must either designate the substance as a covered hazardous substance or publish a written explanation of reasons for determining that the substance is not a covered hazardous substance.

Paragraph (b)(4) of new section 403 also directs the Administrator to include in the list of covered hazardous substances, the amount for each listed substance which constitutes a significant amount for purposes of determining whether a facility is a covered facility under subparagraph 411(a)(1)(B).

Paragraph (b)(5) of new section 403 directs the Administrator to publish a uniform format for hazardous substance reports within three months after Title IV's enactment. In order to avoid unecessary duplication and compliance costs, paragraph (b)(5) also provides that a covered operator may meet the hazardous substance reporting requirements by filing a MSDS for each covered hazardous substance and supplementing the MSDS as necessary to contain the information required by subsection 403(b).

Subsection (c) of new section 403 includes provisions which, among other things: 1) require certain operators to prepare and submit extremely toxic substance status sheets; 2) describe the necessary contents of the sheets; 3) provide for public availability to the sheets and reports contained in the sheet; and 4) direct the Administrator to publish a list of acutely toxic substances that warrant reporting in the extremely toxic substance status sheets.

Paragraph (c)(1) of new section 403 requires the covered operator at each covered facility where an extremely toxic substance is located to prepare and submit to the appropriate local emergency response committee an extremely toxic substance status sheet for each facility 1) within three months after filing the initial hazardous substance report (as required under paragraph (1) of subsection (b)) regarding the facility and 2) every three months thereafter.

Paragraph (c)(1) of new section 403 further provides that the status sheet must be based, to the maximum extent practicable, upon information derived from actual monitoring and quantitative analysis. The Committee has listened fully to concerns expressed over the feasibility and usefulness of such quantitative information. However, the Committee believes that it is appropriate to require actual monitoring and quantitative analysis for such acutely toxic substances. The public has a right to numerical measurements rather than qualitative estimates when such extremely toxic substances are released in their communities.

Paragraph (c)(1) addresses these concerns without sacrificing the overriding purpose of Title IV—to improve greatly community awareness of and preparedness for chemical emergencies. Since actual monitoring and quantitative analysis may not always be feasible, the Committee has qualified such reporting requirements by adding the phrase "to the maximum extent possible". The purpose of this provision is not to provide covered owners and operators with a built-in exemption, but to ensure that well intended requirements remain reasonable at all times.

In view of these concerns, the Committee has also limited the requirement for monitoring toxic emissions to a narrow list of only the most acutely toxic substances, as determined by EPA. To test the feasibility and usefulness of the "mass balancing" concept on a broader scale and for a larger list of substances without unnecessarily or prematurely burdening private industry, the Committee has directed the Administrator, in subsection 211(d) of H.R. 2817, to carry out a pilot program at one Federal facility in each of EPA's 10 regions.

Paragraph (c)(2) of new section 403 provides that an extremely toxic substance status sheet must contain the following information regarding the covered facility: (1) a summary of each report required to be submitted to the Administrator or a State during the preceding three months of a release of an extremely toxic substance as required under section 102 of CERCLA or of a discharge into the environment of any hazardous substance exceeding the amount permitted under the Federal Water Pollution Control Act, the Clean Air Act, or the Solid Waste Disposal Act; and (2) the total amount of emissions of each extremely toxic substance during the preceding three months into each of the following: the air, surface water, groundwater, land, and publicly owned treatment works.

Paragraph (c)(3) of new section 403 provides that a covered operator required to file an extremely toxic substance status sheet must make a copy of the report referred to in subparagraph (2)(A) to any person requesting a copy. The Committee believes that all citizens should have reasonable access to such reports. Citizens should be able to go directly to the covered operators rather than to the local emergency response committees for reports under subparagraph 403(c)(2)(A). The purpose of the report summaries required under subparagraph 403(c)(2)(A) is to assemble in one place a covered operator's violations of various Federal environmental statutes. The

Committee believes this will make it easier for communities to evaluate the prior track record and general concern for safety and environmental protection of its corporate citizens.

Paragraph (c)(4) of new section 403 directs the Administrator to publish, within one year of Title IV's enactment, a list of extremely toxic substances. For purposes of this list, extremely toxic substances must be those covered hazardous substances which are so acutely toxic that their release into the environment in any amount warrants reporting under this subsection.

Subsection (d) of new section 403 provides that each owner or operator required to submit an MSDS under subsection 403(a) and each covered operator required to submit a hazardous substance report under subsection 403(b) or an extremely toxic substance status sheet under subsection 403(c) must keep records of such information for 30 years. The Administrator must take the necessary steps to help such covered operators and owners and operators in complying with this section in order to reduce unnecessary or burdensome paperwork.

Subsection (e) provides that for purposes of new section 403, the Administrator must establish a toll-free telephone number, operating 24 hours per day, that is computer accessible, to respond to telephone inquiries about information collected through the MSDS's and the extremely toxic substance status sheets.

Subsection (f) of new section 403 provides certain exemptions from the section's basic notification requirements.

Paragraph (1) of subsection (f) authorizes the Administrator to exempt an owner or operator from the MSDS requirements of subsection (a) with respect to (1) any hazardous chemical or group of hazardous chemicals; (2) any facility or group of facilities; and (3) specific activities carried out by the owner or operator in a specific location.

Paragraph (f)(2) of new section 403 authorizes the Administrator to exempt an owner or operator from hazardous substances reporting requirements of subsection 403(b) with respect to: (1) any covered hazardous substance or group of covered hazardous substances; (2) any covered facility or group of covered facilities; and (3) specific activities carried out by any covered operator in a specific location.

Paragraph (f)(3) of new section 403 establishes requirements for the Administrator to follow in granting exemptions under subsection 403(b). The paragraph provides that exemptions may be granted on the Administrator's own motion or upon petition of any person, but only after notice and opportunity for public comment. In addition, no exemption may be granted under subparagraph (1)(C) or (2)(C) for specific activities carried out by a covered operator or owner or operator until notice and an opportunity for a hearing have been provided in the locality in which the activities are carried out.

Paragraph (f)(4) of new section 403 provides the standard for exemptions under this section. The Administrator may grant an exemption only upon finding that the covered hazardous substance or hazardous chemical, facility, or activity concerned does not present a reasonable likelihood of injury to human health or the environment.

New Section 404 provides the requirements for and minimum contents of hazardous substance emergency notices and bulletins.

Subsection (a) of section 404 provides that in addition to any other notice required by CERCLA, when there is a hazardous substance emergency, the covered operator must immediately notify (by telephone, by radio, or in person) the appropriate local emergency response committee and any State and local officials designated by the committee to receive notice of the hazardous substance emergency. The subsection further provides that in the case of a hazardous substance emergency, the covered operator must provide an emergency bulletin to such committee and officials as soon as practicable. By these provisions, the Committee on Public Works and Transportation intends to require oral notification immediately after the hazardous substance emergency and written notification (in the form of a bulletin) as soon as practicable after the emergency.

Subsection (b) of new section 404 requires each emergency bulletin under this section to include a full description of the hazardous substance emergency so that appropriate health and safety measures can be taken. The notification must include at a minimum: (1) the chemical name or identity of the hazardous substance or substances involved in the emergency, unless such disclosure would violate the trade secret provisions in new section 407; (2) the actions taken to respond to the emergency; (3) the covered operator's best estimate of the scope of the emergency, including the operator's best estimate of the amount and duration of the release; (4) any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals; and (5) recommendations for any additional action that are necessary.

Section 405 of new Title IV establishes requirements for the public availability and notice of public availability of information required from covered owners and operators under sections 403 and 404.

Subsection (a) of new section 405 provides that the bulletin must be made available to the general public during normal working hours at the site or sites designated by the appropriate local emergency response committee. At the request of a covered operator, however, the appropriate local emergency response committee must not disclose under this section a map showing the substance's location at the facility.

Subsection (b) of new section 405 requires each local emergency response committee to publish an annual notice in local newspapers that the emergency response plan, MSDS's, hazardous substance reports, and extremely toxic substance status sheets have been submitted under this section. The notice must state that hazardous substance emergency bulletins may subsequently be issued. The notice must also announce that members of the public wishing to review any of the plans, reports, MSDS's, or emergency bulletins may do so at the location designated by the local emergency response committee.

Section 406 of new Title IV addresses, among other things, the provision of information: (1) to health professionals for diagnosis or treatment of individuals exposed to specified chemicals or substances; (2) to physicians or nurses for medical emergencies; and (3) to State and local health professionals for preventive measures.

Subsection (a) of new Section 406 requires that a covered operator and any facility owner or operator required to file either an MSDS under subsection 403(a), a hazardous substance report under subsection 403(b), or an extremely toxic substance status sheet under subsection 403(c) must provide the specific chemical identity, if known, of a covered hazardous substance or a hazardous chemical or an extremely toxic substance to any health professional who requests such information in writing, provided that the health professional supplies a written statement of need under this subsection and a written agreement of confidentiality under subsection 406(d). The written statement of need must state that the health professional has a reasonable basis to suspect that: (1) the information is necessary to diagnose or treat an individual; (2) the individual or individuals being diagnosed or treated have been exposed to the substance concerned; and (3) knowledge of the specific chemical identity of such substance will assist in diagnosis or treatment.

Subsection (a) of section 406 further provides that following such a written request, the facility owner or operator to whom the request is made must promptly supply the requested information to the health professional. The authority to withhold the specific chemical identity of a substance as a trade secret under section 407 of the bill does not apply to information required under this subsection, subject to the provisions of subsection 403(d) regarding confidentiality agreements.

Subsection (b) of new section 406 provides that a covered operator and a facility owner or operator required to file a MSDS under subsection 403(b), a hazardous substance report under subsection 403(b), or an extremely toxic substance status sheet under subsection 403(c) must provide a copy of the sheet or report, including the specific chemical identity, if known, of a covered hazardous substance or a hazardous chemical, to any treating physician or nurse who requests the information if such physician or nurse determines that: (1) a medical emergency exists; (2) the specific chemical identity of the covered hazardous substance or hazardous chemical is necessary for or will assist in emergency or first-aid diagnosis or treatment; and (3) the individual or individuals being diagnosed or treated have been exposed to the substance or chemical concerned.

The subsection further states that immediately following such a request, the owner or operator to whom the request is made must provide the requested information to the physician or nurse. In addition, the authority to withhold the specific chemical identity of a substance from an MSDS, a hazardous substance report, or an extremely toxic substance status sheet under section 407 when such information as a trade secret shall not apply to information required to be provided to a treating physician or nurse under this subsection. Subsection 406(b) also provides that, for purposes of this subsection, written confidentiality agreements and statements of need are not to be required as preconditions of disclosure. The facility owner or operator disclosing such information, however, may require a written confidentiality statement in accordance with subsection (d) and a statement setting forth the information which would otherwise be required to be provided by health professionals under subsection 406(b) as soon as circumstances permit.

Subsection (c) of new section 406 addresses the provision of information to State and local health professional in order to undertake preventive measures in connection with releases or potential releases of covered hazardous substance or hazardous chemicals.

Paragraph (c)(1) of section 406 states that a covered operator and a facility owner or operator required to file an MSDS under subsection 403(a), a hazardous substance report under subsection 403(b), or an extremely toxic substance status sheet under subsection 403(c) must provide the specific chemical identity, if known, of a covered hazardous substance or a hazardous chemical to any health professional (such as a physician, toxicologist, or epidemiologist) who is a State or local government employee or a person under contract with the State or local government, and who mades a written request for the information and provides a written statement of need under subsection 406(c) and a written agreement of confidentiality under subsection 406(d).

Paragraph (c)(2) of new section 406 requires the written statement of need to describe with reasonable detail at least one of the following health needs: (1) to assess the hazards of the substance or chemical to which persons living in a State or local community will be exposed; (2) to conduct or assess sampling of the atmosphere to determine exposure levels of various population groups; (3) to conduct periodic medical surveillance of exposed population groups; (4) to provide medical treatment to exposed individuals or population groups; and (5) to conduct studies to determine the health effects of exposure. After the written request, the owner or operator to whom such request is made must promptly provide the information to the State or local health professional. The authority to withhold the specific chemical identity of a substance as a trade secret under section 407 of the bill is not to apply to information required under this subsection, subject to the requirements of confidentiality agreements in subsection (d).

Subsection (d) of new section 406 provides that any person obtaining information under subsections (a) or (c) of section 406 must, in accordance with subsections (a) or (c), agree in a confidentiality agreement not to use the information for any purpose other than the health needs asserted in the written statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. Subsection 406(d) also authorizes the confidentiality agreement to provide for appropriate legal remedies including legally enforceable liquidated damages if the agreement is breached. Nothing in subsection (d) is to preclude parties to a confidentiality agreement from pursuing non-contractual remedies to the extent permitted by law.

Section 407 of new Title IV provides, among other things, the authority of facility owners or operators to withhold certain information qualifying as trade secrets, direction to the Administator to prescribe trade secret regulations, and an exception for information provided for health professionals.

Subsection (a) of new section 407 provides that with regard to a hazardous chemical, any facility owner or operator who files an MSDS under subsection 403(a), a hazardous substance report under subsection 403(b), or an extremely toxic substance status sheet under subsection 403(c) may withhold from the sheet or report the specific chemical identity, including the chemical name and other specific identification (as defined in regulations prescribed by the Administrator of the Environmental Protection Agency under subsection (b)) if the claimant for trade secret protection can show that: (1) the facility owner or operator has not disclosed the information to any other person, other than a member of a local emergency response committee, an officer or employee of the United States or a State or local government, an employee of the facility owner or operator, or a person who is bound by a confidentiality agreement; (2) no other Federal or State law requires disclosure of the information to the public; and (3) knowledge of the withheld information may give the facility owner or operator an opportunity to obtain an advantage over competitors who do not know or use such information.

Paragraph (b)(1) of new section 407 directs the Administator to prescribe trade secret regulations which, consistent with the general trade secret provisions in subsection (a), are identical to the trade secret provisions in the Occupational Safety and Health Administration Hazard Communications Standards and any revisions prescribed by the Secretary of Labor in accordance with the ruling of the United States Court of Appeals for the Third Circuit in *United Steelworkers of America, AFL-CIO-CLC* v. *Thorne G. Auchter.* The regulations prescribed by the Administrator need not be identical to the OSHA or OSHA revised regulations, however, when relating to procedures for the review of petitions challenging trade secret claims and any minor conforming changes deemed appropriate by the Administrator.

Paragraph (b)(2) of new section 407 require that the Administrator establish a procedure for any affected citizen to petition the Administrator for review of a trade secret claim made by a facility owner or operator under section 407. Any appropriate United States district court is to have jurisdiction for review of determinations by the Administrator under this section.

Paragraph (b)(3) of new section 407 directs the Administrator to promulgate the trade secret regulations required in subparagraph (b)(1) as soon as practicable but not later than three months after the enactment of H.R. 2817, and shall promulgate the regulations under paragraph (2) relating to petitions for review of trade secret claims no later than four months after the date on which the trade secret regulations under paragraph (1) become final.

Finally, subsection (3) of new section 407 states that nothing in this section or in regulations adopted pursuant to this section permits any person to withhold information required to be provided to a health professional or a doctor or nurse in accordance with section 406 of the bill.

Section 408 of new Title IV provides for the enforcement of various Title IV requirements.

Subsection (a) of new section 408 makes certain nongovernmental entities and persons liable to the United States for civil penalties. Any person other than a governmental entity who violates any requirement for hazardous substance reports under subsection 403(b), extremely toxic substance status sheets under subsection 403(c), or hazardous substance emergency notices and bulletins under section 404 is liable in an amount not to exceed $20,000 per violation. Any person, other than a governmental entity, who violates any requirement for MSDS's under subsection 403(a), providing information to doctors and nurses in medical emergencies under subsection 406(b), or furnishing information withheld under subsection 407(a) from an MSDS when requested by the Administrator in order to carry out a review under subsection 407(b) is liable in an amount not to exceed $10,000 per violation. Subsection (a) of new section 408 further provides that, each day such a violation continues must, for purposes of this subsection, constitute a separate violation.

Subsection (b) of new section 408 provides criminal penalties—in addition to or in lieu of the civil penalties under subsection 408(a)—against any person other than a governmental entity who knowingly or willfully violates any requirements for submission of MSDS's under subsection 403(a), hazardous substance reports under subsection 403(b), extremely toxic substance status sheets under subsection 403(c), or hazardous substance emergency notices and bulletins under paragraphs 404(a) (1) and (2). Convicted violators are subject to imprisonment for not more than three years, or to a fine determined under section 3623 (or section 3571 if applicable) of title 18, United States Code, or both.

New Section 409 addresses the applicability of State and local law in the Federal community right to know and emergency preparedness programs established under new Title IV.

Subsection (a) of new section 409 states the general rule that nothing in Title IV shall be construed to limit the ability of any State or locality to require submission of informatoin related to hazardous chemicals or to limit the authority of any State to preempt any local law relating to the submission of information concerning hazardous chemicals. After studying the patchwork of State and local right to know laws, the Committee determined that the Nation desperately needed a comprehensive Federal program. The resulting legislation is new Title IV of CERCLA. Subsection 409(a), however, expresses the Committee's ardent belief that any Federal right to know law should establish a floor rather than a ceiling to State and local efforts in this area. Communities must have the flexibility to impose greater requirements when presented with greater needs than those specifically addressed in Title IV. It makes inherently good sense to let communities have the final say in designing community right to know programs.

Subsection (b) of new section 409 provides an exception to the general rule in subsection (a) by requiring a limited Federal preemption of MSDS laws enacted by any State or locality after August 1, 1985. The State or local laws which have MSDS requirements must require that MSDS's be identical in content and format to the MSDS requirements under subsection 403(a) of CERCLA's new Title IV. The State or locality, however, may require supplemental information, through additional sheets attached to the MSDS or such other means as the State or locality considers appropriate.

Subsection (b) further provides that any State or local law enacted after August 1, 1985, and requiring a facility owner or operator who supplies a hazardous chemical to any other facility owner or operator to furnish a MSDS to the other facility owner or operator, must be identical to the requirements under paragraph 403(a)(2) of CERCLA's new Title IV.

New section 410 exempts from the coverage of Title IV the transportation, including the storage incident to such transportation, of any hazardous chemical or covered hazardous substance if the transportation is regulated under the Hazardous Materials Transportation Act, the Hazardous Liquid Pipeline Safety Act of 1979, or the Natural Gas Pipeline Safety Act of 1968. The Committee believes that for the transportation and incidental storage of these hazardous chemicals and covered substances, Title IV of CERCLA should not apply.

Section 411 of Title IV provides definitions for terms used in Title IV.

Subsection (a) of new Section 411 defines terms used only in Title IV.

The term "covered facility" means (1) a facility listed on the National Priorities List or the Comprehensive Environmental Response, Compensation, and Liability Information System list under CERCLA; (2) any facility (other than a facility described in part (1) or part (3) of this definition) which contains a significant amount, as determined by the Administrator, of one or more covered hazardous substances and which is located on a single property or on contiguous or adjacent properties which are under the control of the same persons (or of any person which controls, is controlled by, or is under common control with such person); and (3) a facility which has been issued a permit under section 3005 of the Solid Waste Disposal Act or has been granted interim status under subsection 3005(e) of that Act.

The term "covered hazardous substance" means a substance listed under paragraph 403(b)(4). The term "covered operator" means any person (including any department, agency, or instrumentality of the United States) who owns or operates a covered facility.

The term "hazardous chemical" means any chemical for which an MSDS is required to be submitted under subsection 1910.1200(g) of title 29 of the Code of Federal Regulations, except that the term does not include: (1) any food, food additive, color additive, drug, or any cosmetic regulated by the Food and Drug Administration; (2) any manufactured item containing a hazardous chemical present as a solid whcih does not result in exposure to the hazardous chemical under normal conditions of use; (3) any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public; and (4) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual. This subsection excludes certain categories of substances from the definition of "hazardous chemicals." The Committee anticipates that the words of this subsection shall be interpreted in a reasonable manner. For example, it is not the Committee's intent to require the filing of an MSDS in connection with the storage or sale of a new car because of the "new car smell." As another example, the Committee does not intend to define "research" in a manner which excludes testing.

The term "hazardous substance emergency" means an accidental or abnormal release of a covered hazardous substance from a covered facility which may present an imminent and substantial endangerment to health or environment. For purposes of this definition, the term "abnormal release" means a release that is not a continuous release and is in excess of the normal amounts associated with routine operations of the covered facility, and the term "accidental release" means a release that is not planned.

The term "material safety data sheet" means the sheet required to be developed under subsection 1910.1200(g) of title 29 of the Code of Federal Regulations, as that subsection may be amended from time to time.

Subsection (b) of new section 411 states that terms used in Title IV which are defined for purposes of Title I are to have the meanings given by Title I.

Subsection (b) of H.R. 2817's section 211 authorizes appropriations to the Federal Emergency Management Agency (FEMA) for certain programs relating to hazardous substances.

Paragraph (b)(1) of new section 211 authorizes to be appropriated to FEMA for the fiscal year 1986 and for each of the four fiscal years thereafter, not more than $34,911,000 for training and education programs for Federal, State, and local personnel in hazard mitigation, emergency preparedness, fire prevention and control, disaster response and long-term disaster recovery. These programs must emphasize training and education related to hazardous chemicals. No amount of the funds may be used for training programs which are to be sparately authorized under paragraph (b)(2). Paragraph (b)(1) also authorizes to be appropriated to FEMA for the fiscal year 1986 and for each of the four fiscal years thereafter, not more than $10,170,000 for training in national security, technological and natural hazards, and emergency processes. This training must emphasize hazardous chemical emergencies.

Paragraph (b)(2) of new section 211 authorizes to be appropriated to FEMA for the fiscal year 1986 and for each of the four fiscal years thereafter, not more than $7,000,000 for making grants to support university-sponsored programs and programs of State and local governments designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. These programs must emphasize hazardous chemical emergencies.

Paragraph (b)(3) states that nothing in section 211 is to affect the availability of appropriations to FEMA for any programs carried out by FEMA other than the programs referred to in paragraphs (1) and (2) described above.

Subsection (c) of new section 211 states that nothing in the amendment made by subsection 211(a) is to affect the requirements under the Occupational Safety and Health Act of 1970.

Subsection (d) of new section 211 provides for a pilot program to be carried out by the Administrator at one Federal facility in each of EPA's ten regions to test the feasibility and usefulness of quantitatively measuring the total emissions of substances which are listed below in paragraph 211(d)(3).

The Committee is aware of the perceived need to monitor toxic emissions and also of the need to avoid placing impractical requirements upon covered owners and operators. The extremely toxic substance status sheets under subsection (c) of new section 403 cover what is intended to be a very small list of extremely toxic substances. These substances are so acutely toxic that all covered owners and operators, public and private, must comply. The pilot program under subsection (d) of new section 211, however, covers a much broader list of substances and applies solely to ten Federal facilities (to be designated by the Administrator as provided for under the subsection).

The Committee believes that the pilot program is a reasonable compromise between competing interests and will lead to constructive developments in toxic emissions control and community awareness without overburdening private industry. Efforts suggesting a broad-scale "mass balancing" approach that would require measurements for a expansive list of substances have been intense. While not rejecting the mass balancing concept out of hand, the Committee has limited its use to extremely toxic substances found at any facility and to a broader list of substances found at the ten Federal facilities participating in the pilot program. In view of the need for increased awareness of toxic emissions, it makes good sense to try the mass balancing method; it makes even better sense to try the method on a small scale at first.

Paragraph (d)(1) of new section 211 directs the Administrator to carry out the pilot program. In doing so, the Administrator must use quantitative measurements and analyses to the maximum extent practicable. The purpose of this provision is to ensure that the Administrator monitors the toxic emissions (to the maximum extent practicable) just as covered operators must do for extremely toxic emissions under subsection 403 (c).

Paragraph (d)(2) requires the Administrator to carry out the pilot program at one facility owned and operated by the United States Government in each of the ten regions of the Environmental Protection Agency. The facilities selected must be similar to facilities in the private sector so that the Administrator can determine the applicability of such methods outside the government. The Committee believes that the mass balancing approach needs evaluation, but on a small scale and outside of private industry. This would minimize the adverse affects of such a testing if the concept was only marginally useful or impracticable. The Committee understands, however, the concerns of some that a pilot program carried out solely in the public sector sector runs the risk of being of limited relevance to the private sector. Therefore the Administrator is required to select Federal facilitites that best reflect conditions at private facilities.

Paragraph (d)(3) describes the substances that require actual monitoring and quantitative measurement at each pilot program facility. The list includes: (1) any substances designated as toxic or hazardous by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970; (2) any substance listed in the most recent edition of the "annual Report on Carcinogens" published by the National Toxicology Program of the

United States Public Health Service; (3) any substance for which a Threshold Limit Value (TLV) has been established by the American Conference of Government Industrial Hygienists; (4) any substance listed by the National Fire Protection Association in "Hazardous Chemicals Data" (NFPA 49); (5) any substance identified in "Occupational Health Guidelines for Chemical Hazards" published by the National Institute for Occupational Safety and Health; (6) any substance listed by the National Fire Protection Association and rated II through IV as health hazards or rated III through VI as flammability or reactivity hazards in "Fire Hazard Properties of Flammable Liquids, Gases, Volatile Solids" (NFPA 325M); (7) any substance designated as a carcinogen by the International Agency for Research on Cancer; (8) any substance listed as a carcinogen by the Carcinogen Assessment Group of the United States Environmental Protection Agency; (9) any pesticide the use of which is controlled under section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act; (10) any substance listed in a review by National Cancer Institute scientists published in the Journal of Toxicology and Environmental Health, 8:251-280, tables 3 through 6, and in subsequent published reviews by National Cancer Institute scientists of substances which meet the criteria of the National Toxicology Program for significant carcinogenic effect; and (11) any substance defined as a "hazardous substance" under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

Paragraph (d)(4) of new section 211 requires the Administrator to complete the pilot program and submit a report on its results to the Committee on Public Works and Transportation and Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than two years after the enactment of H.R. 2817. The report must discuss the technological and economic feasibility of emissions and discharge reporting, as well as the usefulness and value of the information collected. In addition, the Administrator must make recommendations on whether a permanent emissions and discharge and inventory reporting program should be established on a continuing basis and, if so, how such a program should be structured.

Paragraph (d)(5) of new section 211 authorizes to be appropriated for fiscal years beginning after September 30, 1985, such sums as may be necessary to carry out the pilot program under this subsection.

SECTION 212—POLLUTION LIABILITY INSURANCE

This section adds a new Title V to CERCLA entitled Pollution Insurance. This new Title, among other things, exempts certain insurance-related risk retention groups and purchasing groups from State laws, rules, or orders described in the language of section 212.

Section 501 of section 212's new Title V contains definitions of some of the most important terms used in the new title. Those definitions are as follows:

(1) The term "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other

arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law.

(2) The term "pollution liability" means liability for injuries arising from the release of hazardous substances or pollutants or contaminants.

(3) The term "risk retention group" means any legally formed corporation or other limited liability association taxable either as a corporation or as an insurance company: (a) which is organized for the primary purpose and whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members; (b) which is chartered or licensed as an insurance company and is authorized to engage in the business of insurance under the laws of any State; and (c) which does not exclude any person from membership in the group solely to provide for members of the group a competitive advantage over the excluded person.

(4) The term "purchasing group" means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

(5) The term "State" means any State of the United States and the District of Columbia.

Section 502 of section 212's new Title V provides that nothing in the new title is to be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. It further provides that the definitions of "pollution liability" and "pollution liability insurance" under any State law are not to be applied for the purposes of new Title V, including recognition or qualification of risk retention groups or purchasing groups.

Without affecting the applicability of State laws generally applicable to persons or corporations, section 503 of new Title V establishes limited exceptions for risk retention groups from any State law, rule, or order which (1) makes unlawful, or regulates, directly or indirectly, the operation of a risk retention group; (2) requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong; (3) requires any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in the State; and (4) otherwise discriminates against a risk retention group or any of its members.

The exemptions just described apply to pollution liability coverage provided by a risk retention group for the risk retention group or for any member of the group, to the sale of pollution liability insurance coverage for a risk retention group, and to the provision of insurance-related services for a risk retention group or any member of such a group. However, nothing in the language establishing the exemptions applies to any State law which requires a risk retention group to (1) comply with the unfair claim settlement practices law of the State; (2) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policy holders under the laws of the State; (3) participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the

State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism; (4) submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses; (5) register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process; (6) furnish, upon request, the State insurance commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction; (7) submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if the commissioner has reason to believe the risk retention group is in a financially impaired condition and the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group; or (8) comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment.

Finally, new section 503 provides that a State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that, under section 503, a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

As in the preceding section, section 504 of new Title V establishes limited exemptions for purchasing groups from any State law, rule, or order which (1) prohibits the establishment of a purchasing group; (2) makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters; (3) prohibits a purchasing group or its members from purchasing insurance described in the preceding item; (4) prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time; (5) requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form; (6) requires that a certain percentage of a purchasing group must obtain insurance on a group basis; (7) requires that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State; or (8) otherwise discriminates against a purchasing group or any of its members.

The exemptions just described apply to pollution liability insurance and comprehensive general liability insurance which includes pollution liability coverage provided to a purchasing group or any member of a purchasing group. The exemptions also apply to the sale to a purchasing group or a group's member of either pollution liability insurance and comprehensive general liability coverage, or insurance related services, or management services. New section

504 also provides that a State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that, under section 504, a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

Section 505 of new Title V relates to the applicability of securities laws to risk retention groups and their members. Under section 505, the ownership interests of members of a risk retention group shall be considered to be (1) exempted securities for purposes of section 5 of the Securities Act of 1933 and for purposes of section 12 of the Securities Exchange Act of 1934; and (2) securities for purposes of the provisions of section 17 of the Securities Act of 1933 and the provisions of section 10 of the Securities Exchange Act of 1934. Section 505 provides further that a risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940. Finally, section 505 provides that the ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

SECTION 213—RELEASES ASSOCIATED WITH BRINE DISPOSAL

This section adds a new section 130 to CERCLA.

Subsection (a) of this section directs the Administrator to conduct a review of state programs to protect public health and the environment in states in which annular injection of brines associated with oil and gas production is permitted. The review may only be conducted in the case of states in which there are more than 2500 active wells at which annular injection is used as of the date of enactment of H.R. 2817.

New subsection (b) provides that if the Administrator determines, on the basis of this review that any state is not adequately enforcing a state program to assure that public health or the environment will not be endangered by releases associated with annular injection or surface disposal of brines the Administrator, after notice to the state, is to take or order such enforcement or corrective action as may be necessary to assure protection of public health or the environment. The Administrator may also bring a civil action to require compliance with any enforcement or corrective action taken or ordered. A civil penalty not to exceed $5,000 for each day of violation of any enforcement of corrective action may be assessed.

New subsection (c) provides that the review shall be completed, and any enforcement or corrective action taken or ordered shall be commenced, no later than 18 months after the date of enactment.

New subsection (d) provides that for purposes of this provision the term "annular injection" means the re-injection of brines associated with the production of oil or gas between the production and surface casings of a conventional oil or gas producing well.

SECTION 214—RADON GAS

Subsection (a) of this section directs the Administrator of the Environmental Protection Agency to identify the locations in populated areas in the United States where radon gas and radon daughters are forming from naturally occurring deposits of uranium and are collecting in residences and other structures. The Administrator is to assess, for each location identified, the amounts of radon gas and radon daughters that are forming and the amounts that are present in residences and other structures. The Administrator is also to determine the level of radon gas and radon daughters which poses a threat to human health and assess for each location the extent of the threat to human health. A report to Congress on the results of the assessment is to be made not later than one year after the date of enactment.

Subsection (b) directs the Administrator to conduct a demonstration program to test methods of reducing or eliminating the threat to public health of radon gas and radon daughters. These methods are to include venting of residences and other structures and any other methods the Administrator determines may be effective in reducing or eliminating the threat. The demonstration program under this section is to be conducted at the Reading Prong, Pennsylvania and New Jersey, and at such other sites as the Administrator considers appropriate.

The Administrator is directed to submit interim reports not later than September 30, 1986, and September 30, 1987, on the status of the deomonstration program. A final report is to be submitted not later than September 31, 1988.

SECTION 215—OVERSIGHT AND REPORTING REQUIREMENTS

Section 215 adds a new subsection (h) to section 301 to CERCLA relating to oversight and reporting requirements.

New subsection (h) provides that the appropriate authorizing committees of Congress shall conduct oversight hearings not less often than annually to ensure that CERCLA is being implemented according to the purposes of the Act and Congressional intent in enacting the Act. The Administrator is directed to submit a report annually to the Committee on Public Works and Transportation and Energy and Commerce of the House of Representatives, and the Committee on Environment and Public Works of the Senate on the progress achieved in implementing CERCLA. This report is to specifically include:

> A detailed description of each feasibility study carried out at a facility under Title I.—The status and estimated date of completion of each such study.
>
> Notice of each such study which will not meet a previously published schedule for completion and the new estimated date for completion.
>
> An evalution of newly developed feasible and achievable permanent treatment technologies.
>
> Progress made in reducing the number of facilities in the interim category on the National Priorities List.

Title III—Provisions Relating to Taxation

SECTION 301—FIVE-YEAR EXTENSION

This section extends the taxes under 4611 of the Internal Revenue Code of 1954 through 1990.

SECTION 302—REPEAL OF POST-CLOSURE TAX AND TRUST FUND

This section repeals the post-closure tax on the receipt of hazardous waste at a qualified hazardous waste disposal facility and the provision establishing the post-closure liability trust fund.

SECTION 303—TAX ON CHEMICAL FEEDSTOCKS

This section amends Subchapter B of Chapter 38 of the Internal Revenue Code of 1954 relating to taxes on feedstocks to extend at the current rate the feedstock taxes. It also contains clarifying exemptions from the tax with respect to substances used in the production of motor fuel, substances having transitory presence during a smelting or refining process and substances used in the production of animal feed.

SECTION 304—WASTE-END TAX

This section imposes under the Internal Revenue Code of 1954 a waste-end tax determined on a dry-weight basis sufficient to raise revenues in the amount of $250 million in each of the five fiscal years 1986 through 1991 for deposit into the Hazardous Substance Superfund.

SECTION 305—BROAD-BASED TAX

This section imposes under the Internal Revenue Code of 1954 a broad-based corporate tax sufficient to raise revenues in the amount of $720 million in each of the five fiscal years after fiscal year 1985 for deposit in the Hazardous Substances Superfund.

SECTION 306—TAX FOR PETROLEUM RELEASE RESPONSE ACCOUNT

This section imposes under the Internal Revenue Code of 1954 such taxes are are necessary to raise revenues in the amount of $180 million in each of the first five fiscal years after fiscal year 1985 for deposit in the Petroleum Release Response Account established under section 206 of CERCLA (as added by this bill). No amount of such taxes shall be imposed during any calendar quarter if, on the last day of the preceding calendar quarter, the unobligated balance of the Petroleum Release Response Account exceeds $100 million. The taxes are to be imposed during any calendar quarter if, on the last day of the preceding calendar quarter, the unobligated balance is less than $80 million.

SECTION 307—TAX ON IMPORTED SUBSTANCES

This section imposes under the Internal Revenue Code of 1954 an import tax in amounts sufficient to raise revenues of $300 million in each of the five fiscal years after fiscal year 1985 for deposit into the Hazardous Substance Superfund. The tax is an ad valorem tax and is to be imposed on the sale by the importer of any substance which is directly or substantially manufactured or produced from materials or feedstocks consisting of one or more taxable chemicals under section 4662(a) of the Internal Revenue Code of 1954.

Title IV—Comprehensive Oil Pollution Liability and Compensation

Title IV establishes a liability and compensation scheme for oil pollution resulting from the discharge of oil from a vessel or facility into the navigable waters of the United States. Although there are existing Federal and State laws which address various aspects of such a contingency, these laws are often limited in scope and do not provide adequate compensation to those who suffer economic loss as a result of an oil spill incident.

This is the sixth Congress in which there has been an attempt to enact a Comprehensive Oil Pollution, Liability and Compensation Act. Legislative consideration of the issue began in the 94th Congress. A bill was reported to the House in September, 1976. Congress did not, however, have sufficient time to finish action on that bill.

Both the House and Senate approved similar legislation during the 95th Congress. This legislation failed to become law when agreement could not be reached on precise language during the Second Session of that Congress.

During the 96th Congress, the House approved a bill, H.R. 85, to establish a comprehensive liability and compensation scheme. Serious consideration was given to making this bill part of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA: P.L. 95-517). For a number of reasons, the bill was not included in CERCLA and it died when the Senate failed to act on H.R. 85 prior to adjournment.

During the 97th Congress, similar legislation was reported, but it did not reach the House Floor.

During the 98th Congress, the House again approved a bill to establish an oil spill comprehensive liability and compensation scheme, this time as an amendment to H.R. 5640, the Superfund Expansion and Protection Act of 1984. That legislation was referred to the Senate Committee on Finance, where no action was taken prior to the 98th Congress' adjournment.

Despite early opposition to the establishment of a comprehensive liability and compensation scheme for oil spill incidents, the Administration now supports enactment of this type of legislation.

Although United States oil spill experience has generally been lower than in the rest of the world, the Committee believes that there is a need for the establishment of a comprehensive liability and compensation scheme to govern oil spill incidents. In 1984, three of the four major spills worldwide occurred in United States' waters. In 1983, one out of the five major worldwide spills was in the United States.

There are currently four Federal laws which establish, in varying degrees, oil pollution liability and compensation requirements. The Federal Water Pollution Control Act (FWPCA, more commonly referred to as the Clean Water Act) establishes liability for the recovery of the actual costs of the removal of oil by the United States Government in the event of a discharge of oil in harmful quantities into the navigable waters of the United States. The Trans-Alaska Pipeline Authorization Act establishes liability for damages in the event of a discharge of oil from any vessel carrying oil that has been transported through the Trans-Alaska Pipeline to any United States port. The Outer Continental Shelf Lands Act Amendments of 1978 establishes liability for cleanup costs and damages resulting from Outer Continental Shelf Lands Act activities. The Deepwater Port Act of 1974 establishes liability for cleanup costs and damages resulting from the discharge of oil from a vessel within a deepwater port safety zone or from a vessel which received oil at a deepwater port and was not moored at a deepwater port. Each act establishes a separate compensation fund, financed by separate per-barrel fees levied on oil, and sets up its own definition of vessel liability, liability limits, and financial responsibility.

The existence of four Federal statutes addressing the consequences of oil pollution from a discharge of oil from a vessel or facility results in duplication of administrative arrangements and activity, the maintenance of four different funds, and the enforcement of disparate regulations for essentially the same purposes. Further complicating matters, the Federal Water Pollution Control Act, Outer Continental Shelf Lands Act, and Deepwater Port Act funds are administered by the Coast Guard, and the Trans-Alaska Pipeline Fund is administered by holders of the pipeline right-of-way through a special tax-exempt government corporation.

These statutes have provided only a partially cost-efficient mechanism for governing oil spill incidents. As a general rule, they provide adequate compensation to those persons who have suffered damages as a result of such incidents. To date, only the Federal Water Pollution Control Act has been drawn up to serve the established purpose of coping with the consequences of oil spills. Experience under this Act has demonstrated the inadequacy of the current statutory scheme. The Coast Guard has been unable to achieve full recovery of cleanup costs from responsible parties and has had to rely on regular or supplemental appropriations to meet cleanup requirements. In addition, the Fund has never been funded at its authorized level of $35 million and, according to the Coast Guard, has on occasion been fully depleted. Even at its full authorized level, this fund would be grossly inadequate to provide adequate and timely compensation in the event of a catastrophic spill such as the Amoco Cadiz.

In addition to the Federal laws, there are currently twenty-four States which have enacted oil spill liability laws. In general, the State regimes prohibit and penalize oil discharges, require responsible parties to report spills and to clean them up, and designate a State authority to coordinate State cleanup efforts and cooperate with Coast Guard and Environmental Protection Agency officials. Fourteen of these States have also created compensation funds which are financed by license fees, penalties, fines, and/or appropriations. Five States finance their fund, wholly or partially, by a per-barrel tax on oil. There is a wide divergence among the State laws regarding such matters as coverage, legal defenses, procedures for settling claims, and liability limits. As a result, a single oil spill incident could potentially be governed by several different levels of liability and compensation.

In general, a private claimant injured by a discharge of oil from a vessel or facility must now depend on compensation pursuant to State statutes, if applicable, or suits brought against the responsible party. In the United States such suits may be brought by a party who suffers damage caused by oil pollution under common law and general principles of maritime law. However, for a party to be held liable, either negligence must be proved or unseaworthiness of the offending vessel must be shown. The prospects of obtaining adequate compensation in such an action are complicated by the fact that each State, as well as the Federal Government, has its own body of common law. Furthermore, the owner of the vessel or facility may be entitled to limit his liability under the Limitation of Liability Act. Thus, a claimant's prospects for recovering damages from a spiller in such a suit are uncertain, at best.

The Committee's approval of Title IV is meant to address this situation.

SECTION 400—SHORT TITLE

This section provides that the title may be cited as the Comprehensive Oil Pollution Liability and Compensation Act.

Subtitle A—Oil pollution liability and compensation

SECTION 401—DEFINITIONS

Section 401 contains definitions frequently used in Title IV. They are as follows:

(1) The term "claim" means a demand in writing for a sum certain.

(2) The term "cleanup costs" means the costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from that incident.

(3) The term "discharge" means an intentional or unintentional emission, and includes spilling, leaking, pumping, pouring, emptying or dumping.

(4) The term "facility" means a structure, or group of structures, which is wholly or partially located, on the Outer Continental Shelf and is used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the Outer Continental Shelf. The term also means a structure or group of structures licensed under the Deepwater Port Act of 1974.

(5) The term "foreign claimant" means any person who asserts a claim and who (a) resides in a foreign country, (b) is the government of a foreign country, or (c) is an agency or political subdivision of a foreign country.

(6) The term "fund" means the fund established by subtitle B of this title.

(7) The term "guarantor" means the person, other than the responsible party, who provides evidence of financial responsibility for a responsible party.

(8) The term "incident" means any occurrence or series of occurrences having the same origin, either of which involves one or more vessels, facilities, or any combination thereof, and which causes or poses a substantial threat of oil pollution.

(9) The term "inland oil barge" means a non-self-propelled vessel, carrying oil in bulk as cargo or in residue from cargo and certifi-

cated to operate only on the internal waters of the United States while operating in such waters.

(10) The term "internal waters of the United States" means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside that baseline which are a part of the Gulf Intracoastal Waterway.

(11) The term "lessee" means a person holding a leasehold interest in an oil and gas lease on submerged lands of the Outer Continental Shelf granted or maintained under the Outer Continental Shelf Lands Act.

(12) The term "licensee" means a person holding a license issued under the Deepwater Port Act of 1974.

(13) The term "mobile offshore drilling unit" means every watercraft or other contrivance (other than a public vessel of the United States) capable of use as a means of transportation on water and as a means of drilling for oil on the Outer Continental Shelf.

(14) The term "natural resources" means the living and nonliving resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any State or local government, or any foreign government. The term includes the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976.

(15) The term "navigable waters" means the waters of the United States, including the territorial sea.

(16) The term "oil" means petroleum, including crude oil or any fraction from or residue of crude oil.

(17) The term "oil pollution" is defined in three parts. First, the term means the presence of oil (a) in or on the navigable waters or, (b) on land within the United States immediately adjacent to such waters, or (c) in or on the waters of the contiguous zone. The oil must have been discharged from a vessel or facility in quantities which the President has determined may be harmful pursuant to paragraph 311(b)(4) of the Federal Water Pollution Control Act. Secondly, the term means the presence of oil—other than natural seepage—in or on waters outside the territorial limits of the United States and of any foreign country if it (a) results from activities conducted under the Outer Continental Shelf Lands Act; (b) results from the operations of a deepwater port licensed under the Deepwater Port Act; (c) is causing injury to or loss of natural resources; or (d) results from the transportation of oil by a ship which received the oil at a terminal of the Trans-Alaska Pipeline for transportation to a United States port, before its arrival at a port in the United States. Thirdly, the term means the presence of oil—other than natural seepage—(including the territorial sea or adjacent shoreline) of a foreign country if it (a) results from a vessel within the navigable waters; (b) results from activities conducted under the Outer Continental Shelf Lands Act; (c) results from the operations of a deepwater port licensed under the Deepwater Port Act or a vessel transiting to or from a deepwater port and located in a safety zone of a deepwater port under the Deepwater Port Act; or (d) in the case of the waters or adjacent shoreline of Canada, results from the transportation of oil by a ship which received the oil at a terminal of the Trans-Alaska Pipeline for transportation to a

port in the United States, before the ship's arrival at a port in the United States.

(18) The term "operator" means, in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel; or, in the case of a pipeline, any person, except the owner, who is responsible for the operation of such pipeline by agreement with the owner.

(19) The term "Outer Continental Shelf" has the meaning set forth in section 2(a) of the Outer Continental Shelf Lands Act.

(20) The term "owner" means, in the case of a vessel or pipeline, any person holding title to, or in the absence of title, any other indicia of ownership of, the vessel or pipeline, whether by lease, permit, contract, license, or other form of agreement except that such term does not include any person who, without participating in the management or operation of a vessel or a pipeline, holds indicia of ownership primarily to protect his security interest in the vessel or pipeline.

(21) The term "permittee" means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act.

(22) The term "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or any other commercial, legal, or governmental entity.

(23) The term "public vessel" means a vessel which (a) is owned or chartered by demise, and operated by the United States, a State or political subdivision thereof, or a foreign government, and (b) is not engaged in commercial service.

(24) The term "removal costs" means (a) costs incurred under sections 311(c), 311(d), or 311(e) of the Federal Water Pollution Control Act, section 5 of the Intervention on the High Seas Act, or section 18(b) of the Deepwater Port Act of 1974, and (b) other cleanup costs other than those previously described.

(25) The term "responsible party" means, (a) in the case of a vessel or pipeline, the owner or operator of the vessel or pipeline; (b) in the case of a facility (other than a deepwater port or pipeline) the lessee or permittee of the area in which the facility is located, or the holder of a right of use and easement granted under the Outer Continental Shelf Lands Act for the area in which the facility is located, where the holder is not the person who is the lessee or permittee of the facility; and, (c) in the case of a deepwater port, the licensee.

(26) The term "Secretary" means the Secretary of Transportation.

(27) The term "ship" means a vessel (other than an inland oil barge) which is carrying oil in bulk as cargo or in residue from cargo.

(28) The term "United States" and "State" mean the several States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(29) The term "United States claimant" means any person residing in the United States, the Government of the United States or

any agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim.

(30) The term "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

SECTION 402—COORDINATION WITH INTERNATIONAL CONVENTIONS

Section 402 provides that during any period in which both the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984, are in force with respect to the United States, this subtitle shall not apply with respect to damage arising out of or directly resulting from oil pollution or a substantial threat of oil pollution to the extent that compensation is available under the conventions and subtitle D of this Act.

SECTION 403—DAMAGES AND CLAIMANTS

Subsection (a) of section 403 specifies the damages for which a claim may be asserted under the Act.

As a general rule, claims may be asserted for damages for economic loss incurred on or after the effective date of this section and arising out of or directly resulting from oil pollution or a substantial threat of oil pollution for—

removal costs (subsection (a)(1));

injury to, or destruction of, real or personal property (subsection (a)(2));

reasonable costs incurred in (A) assessing both short-term and long-term and long-term injury to, or destruction of, natural resources (b) preparing a restoration and acquisition plan with respect to the damaged resources, and (c) restoring or acquiring the equivalent of the damaged resources (subsection (a)(3));

loss of subsistence use of natural resources (subsection (a)(4));

loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages are sustained during the two-year period beginning on the date the claimant first suffers such loss (subsection (a)(5)); and

loss of tax revenue for a period of one year due to injury to real or personal property (subsection (a)(6)).

The damages specified in subsection (a) may not, in all instances, be available to all claimants. In order to determine whether a particular claimant may assert a claim for damages under subsection (a), reference must be made to subsections (b), (c), (d) which describe the persons who have standing to assert claims for the types of damages enumerated in subsection (a).

Subsection (b) of Section 403 provides that, as a general rule, a claim for removal costs (subsection (a)(1) damages) may be asserted by any person. However, there are limitations on recovery by responsible parties. A responsible party with respect to a vessel or facility involved in an incident may assert a claim for removal costs only if he can show that (1) he is entitled to a defense to liability under section 404(c) of this Act, or (2) he is entitled to a limitation of liability under section 404(b) of this Act. If a responsible party is not entitled to a defense to liability, but is entitled to a limitation of liability, he may assert a claim for removal costs only to the extent that the sum of the removal costs incurred by him plus the amounts paid by him or by his guarantor for claims asserted under subsection (a) exceeds the limitation to which he is entitled.

Subsection (c)(1), provides that a claim for subsection (a)(2) damages (injury to, or destruction of, real or personal property) with respect to oil pollution described in section 401(17) (A) or (B) may be asserted by any United States claimant, but only if the property is owned or leased by the claimant. Subsection (c)(1) also provides that a claim for subsection (a)(4) damages (the loss of subsistence use of natural resources) with respect to oil pollution described in Section 401(17) (A) or (B) may be asserted by any United States claimant but only if the natural resource is utilized by the claimant.

Subsection (c)(2) of Section 403, provides that subsection (a)(3) damages (for injury to and destruction of natural resources) may be asserted only by the President as trustee for natural resources controlled by the United States or by the governor of any State for natural resources within the boundary of the State and controlled by the State or local government within the State.

Subsection (c)(3) of Section 403, provides that a claim subsection (a)(5) damages (for loss of profits or impairment of earning capacity due to injury of destruction of real or personal property or natural resources) with respect to oil pollution described in Section 401(17) (A) or (B) may be asserted by any United States claimant, but only if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resources or, if such activities are seasonal in nature, 25 percent of the claimant's earnings during the season in which such activities took place.

Subsection (c)(4) of Section 403, provides that a claim subsection (a)(5) damages (for loss of tax revenue for a period of one year due to injury to real or personal property) may be asserted only by a State or political subdivision thereof.

Subsection (d) of Section 403 relates to damages recoverable by foreign claimants. Subsection (d)(1), establishes the general rule. A claim may be asserted for damages under subsection (a)(2), (3), (4), or (5) with respect to oil pollution described in Section 401(17)(C) by a foreign claimant who is a resident of the country in which the oil pollution occurs, to the same extent that a United States claimant would be able to assert a claim with respect to oil pollution described in Section 401(17)(A): First, the foreign claimant must not have been otherwise compensated for his loss. And second, the recovery must be authorized by a treaty or an executive agreement between the United States and the foreign country of which the claimant is a resident; or the Secretary of State, in consultation with the Attorney General must certify that the country involved provides a comparable remedy for United States claimants.

Subsection (d)(2) provides a special rule for Canadian claimants respecting Trans-Alaska pipeline oil. In the case of any oil pollution described in Section 401(17)(B)(iv) or 401(17)(C)(iv), a claim may be asserted for damages under subsection (a) (2), (3), (4), or (5) by a resident of Canada with regard to subsection 403(d)(1)(B), to the same extent that a United States claimant would be able to assert a claim with respect to oil pollution described in section 401(17) (A) and (B).

Subsection (e) of section 403 provides that the Attorney General may assert a claim under subsection (a) of this section, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under section 403.

Subsection (f) of Section 403 provides that if the Attorney General fails to act under subsection (e) within sixty days after the date on which the Secretary designates a source under section 406, any member of a group may assert a claim for damages on behalf of that group. The failure of the Attorney General to act does not have any bearing on any claim for damages asserted under this section.

SECTION 404—LIABILITY

Subsection (a) of section 404 establishes the general rule for liability. The responsible party with respect to a facility or a vessel (other than a public vessel) that is the source of oil pollution, or poses a substantial threat of oil pollution, is subject to joint, several, and strict liability for all damages for which a claim may be asserted under section 403. Liability for a substantial threat of oil pollution is created only in circumstances justifying the incurrence of removal costs under section 311 (c), (d), or (1) of the Federal Water Pollution Control Act, section 5 of the Intervention on the High Seas Act, or subsection (b) of section 18 of the Deepwater Port Act of 1974.

Subsection (a)(2) of section 404 establishes a special rule for mobile offshore drilling units (MODU). This subsection apportions liability among parties engaged in activities pursuant to the Outer Continental Shelf Lands Act. Subsection (a)(2)(A) provides that, in any case in which MODU unit is being used as a facility and is the source of oil pollution originating on or above the surface of the water or poses a substantial threat of such oil pollution, the MODU is deemed to be a vessel which is a ship for purposes of subtitle A of this Act. Subsection (a)(2)(B) provides that the responsible party for the area in which the facility is located shall be liable for costs arising from oil pollution incidents to the extent that the damages exceed the liability imposed upon the responsible party for the MODU. Subsection (a)(2)(C) provides that both the responsible party for the MODU and the responsibility party for the area in which the facility is located shall be jointly, severally and strictly liable for all costs for which a claim may be asserted under section 403 in the following situations: (1) if the incident was primarily caused by the willful misconduct or gross negligence within the privity or knowledge of both the owner or operator of the MODU and the lessee or permittee of the area, or holder of a right of use or easement for the area in which the unit is located; or (2) if the owner or operator and the permittee or holder fail or refuse to report the incident where required by law or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup and removal activities.

Subsection (b)(1) of section 404 establishes the general rule for limits on liability. The general rule is that the responsible party may limit the total of his liability and any removal costs incurred by, or on behalf of, the responsible party to specified levels. In the case of a vessel other than a ship or an inland oil barge, $500,000 or $300 per gross ton, whichever is greater. In the case of a ship, $3,000,000 or $420 per gross ton, whichever is greater (but not to exceed $60,000,000). In the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater. In the case of a facility, $50,000,000.

Subsection (b)(2) of section 404 provides that a responsible party loses the right to limit his liability under subsection (b)(1) where an incident is caused primarily by willful misconduct or gross negligence within the privity or knowledge of the responsible party; or when a responsible party fails or refuses to report the incident where required by law or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup and removal activities.

Subsection (b)(3) of section 404 requires the Secretary, from time to time, to report to Congress on the desirability of adjusting the limitations or liability specified in the subsection.

Subsection (c)(1) of section 404 wholly exonerates the responsible party from the liability imposed by section 404(a) where he is able to prove that the incident resulted from one of the following causes: (1) an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable, and irresistible character; or (2) by an act or omission of a person other than a responsible party, an employee or agent of a responsible party, or one whose act or omission occurs in connection with a contractual relationship with a responsible party. These defenses are not available if the responsible party has failed or refused to report an incident where required by law.

Subsection (c)(2) provides for certain partial defenses. A responsible party is not liable under subsection (a) of this section in two situations. First, there is no liability, as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant. And second, a responsible party is not liable under subsection (a) to a particular claimant to the extent that the incident or economic loss is caused by the negligence of that claimant.

Subsection (d)(1) establishes the general rule that the Fund is liable for damages for which claims may be asserted under section 403, to the extent that the damages are not otherwise compensated. Subsection (d)(2) provides for certain defenses to liability. The Fund is not liable for damages, except for certain removal costs, where the incident is caused wholly by an act of war, hostilities, civil war, or insurrection; (2) as to particular claimant, the incident or the economic loss is caused, in whole or in part, by the gross negligence of willful misconduct of the claimant; or (3) as to a particular claimant, the incident or the economic loss is caused by the negligence of the claimant.

Subsection (e) of Section 404 establishes the general rule that the responsible party or his guarantor is liable to the claimant for interest on the amount paid in satisfaction of a claim under section

403 for the period beginning on the date on which the claim is presented to the responsible party or guarantor and ending on the date on which the claimant is paid, inclusive. If the responsible party or quarantor offers to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim, the period for which interest must be paid does not include the period beginning on the date such offer is made and ending on the date such offer is accepted. If the offer is made within sixty days after the date upon which the claim is presented, or of the date upon which advertising is begun pursuant to section 406, whichever is later, the period does not include any period before such offer is accepted. The insterest paid under this subsection is calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period from which interest must be paid to the claimant, as published in the Federal Reserve bulletin. The interest under this subsection is in addition to damages for which claims may be asserted under section 403 and must be paid without regard to any limitation of liability. The payment of interest by a guarantor shall be subject to 405(c), taken with other claims, may not exceed the amount of financial responsibility which that guarantor has provided for the responsible party for the vessel or facility that was a source of oil pollution in the incident.

Subsection (f) provides that responsible party may not transfer the liability imposed under this section to any other person. Subsection (f) provides that this prohibition does preclude agreements in which another person may agree to indemnify the responsible party for the liability imposed under subsection (a) of this section.

Subsection (g) provides that nothing in this subtitle bars a cause of action that a responsible party subject to liability under this section or a guarantor has or would have by reason of subrogation or otherwise against any person.

Subsection (h) provides that to the extent that it is in conflict with, or otherwise inconsistent with, any other law relating to liability or the limitation thereof, this section supersedes such other law.

SECTION 405—FINANCIAL RESPONSIBILITY

Section 405 requires a responsible party to establish evidence of financial responsibility sufficient to satisfy his potential liability.

Subsection (a)(1) requires the responsible party for a vessel (except a public vessel or nonself-propelled that does not carry oil as cargo or fuel) over three hundred gross tons that uses a facility or the navigable waters to establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum amount under Section 404 of this Act of liability to which the responsible party would be exposed in a case where he would be entitled to limit his liability. In cases where a responsible party owns or operates more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

In order to ensure compliance with the financial responsibility requirements, Subsection (a)(2) of this section requires the Secretary of the Treasury to withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have the certification required under this subsection or the regulations issued hereunder. In addition, subsection (a)(3) provides that the Secretary of the department in which the Coast Guard is operating may (1) deny entry to any facility, to any port or place in the United States, or to the navigable waters, or (2) detain at the facility or at the port or place in the United States, any vessel subject to this subsection that, upon request, does not produce the certification required under this subsection or regulations issued hereunder.

Subsection (b) of Section 405 requires the responsible party for a facility to establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the responsible party would be exposed in a case where he would be entitled to limit his liability in accordance with Section 404 of this Act. In cases where the responsible party is responsible for more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to one such facility.

Subsection (c) of this section provides that financial responsibility may be established by any one, or by any combination, of the following methods acceptable to the Secretary: evidence of insurance, surety bond, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed must be issued by a bonding company authorized to do business in the United States.

Subsection (d) of this section provides that a claim under section 403 (a) may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section for any responsible party with respect to a facility or vessel. In defending against such a claim, the guarantor may invoke all rights and defenses which would be available to the responsible party under this subtitle. He may also invoke the defense that the incident was caused by the willful misconduct of the responsible party, but he may not invoke any other defense that he might be entitled to invoke in proceedings brought by the responsible party against him.

Subsection (e) of this section provides that nothing in subtitle A of this Act is to impose liability with respect to an incident on any guarantor for damages or removal costs which exceeds, in the aggregate the amount of financial responsibility which that guarantor has provided for the responsible party for any vessel or facility that was a source of oil pollution in that incident. This prohibition shall not be construed to limit any other statutory, contractual, or common law liability of a guarantor to any responsible party for whom such guarantor provides evidence of financial responsibility including, but not limited to, the liability of such guarantor for negotiating in bad faith a settlement of any claim.

SECTION 406—DESIGNATION OF SOURCE AND ADVERTISEMENT

Section 406 establishes the procedure for the designation of the responsible party for an oil pollution incident.

Subsection (a) of this section requires the Secretary, upon receiving information of an incident that involves oil pollution, where possible and appropriate, to designate the source or sources of the oil pollution. If a designated source is a vessel or a facility, the Secretary is required to immediately notify the responsible party and the guarantor, if known, of that designation.

Subsection (b) of this section provides that if a responsible party or guarantor fails to inform the Secretary, within five days after receiving notification of a designation, of his denial of the designation, the party or guarantor is required to advertise the designation and the procedures by which claims may be presented to such party or guarantor, in accordance with regulations promulgated by the Secretary. A responsible party or guarantor must begin advertisement no later than fifteen days after the date of the designation. If the responsible party does not advertise, the Secretary is required to promptly and at the expense of the responsible party or guarantor involved, advertise the designation and procedures by which claims may be presented to the responsible party or guarantor. The responsible party or guarantor must advertise for a period of not less than thirty days.

Subsection (c) requires the Secretary to advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Fund if the responsible party and the guarantor both deny a designation within five days after receiving notification of a designation, the source of the oil pollution was a public vessel, or the Secretary is unable to designate the source or sources of the oil pollution.

SECTION 407—CLAIMS SETTLEMENT

Section 407 establishes the procedure for the presentation and settlement of claims. Subsection (a) of this section establishes the general rule that all claims must be presented to the responsible party or guarantor of the source of the oil pollution incident.

Subsection (b) of this section provides that claims may be presented directly to the Fund in two instances. First, a claimant may present a claim to the Fund where the Secretary has advertised or otherwise notified claimants in accordance with section 406(c). Second, a responsible party who may assert a claim under section 403(a) may present a claim to the Fund.

Subsection (c) of this section provides that a claimant who has presented a claim to a responsible party or guarantor may present a claim to the Fund in two circumstances: (1) where each person to whom the claim is presented denies all liability for the claims or, (2) where the claim is not settled by any person by payment within 180 days after the date upon which the claim was presented, or advertising was begun pursuant to section 406 (b), whichever is later. If either of these circumstances exist, the claimant may make an irrevocable and exclusive election to either commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

Subsection (d) of this section provides that a claimant who has presented a claim to a responsible party or guarantor may present a claim to the Fund for uncompensated damages, where full and adequate compensation is unavailable, either because the claim exceeds the responsible party's limit of liability or because the responsible party and his guarantor are financially incapable of meeting their obligations.

Subsection (e) of this section requires the responsible party or guarantor in the case of a claim which has been presented to the responsible party or guarantor under subsection (a) and which is being presented to the Fund under subsection (c) or (d), at the request of the claimant, to transmit the claim and supporting documents to the Fund. The Secretary may, by regulation, prescribe the documents to be so transmitted and the terms under which they are to be transmitted.

Subsection (f) of this section requires the Secretary to establish procedures and standards for the prompt appraisals and settlement of claims against the Fund.

Subsection (g) of this section provides that the Secretary may use the facilities and services and private insurance and claims adjusting organizations or State agencies in processing claims against the Fund and may contract for those facilities and services. To the extent necessitated by extraordinary circumstances, where the services or private organizations or State agencies are inadequate, the Secretary may use Federal personnel, on a reimbursable basis, to process claims against the Fund.

Subsection (h) of this section provides that any claimant, or any other person suffering legal wrong because of, or adversely affected or aggrieved by, a final determination of the Secretary with respect to a claim, may bring an action for judicial review of the determination in accordance with chapter 7 of title 5, United States Code. The action must be brought under section 409 and is the exclusive judicial remedy with respect to such final determination of the Secretary. The action must be filed not later than thirty days after the Secretary issues notification of the final determination. Venue for the action lies in any district where the claimant resides, or in any district described in section 409(b) of this Act.

Subsection (i) of this section sets forth the procedures relating to actions against responsible parties or guarantors. In an action brought under this subtitle against a responsible party or guarantor, both the plaintiff and defendant must serve a copy of the complaint and all subsequent pleadings upon the Fund at the same time those pleadings are served upon the opposing parties. The Fund may intervene as a party as a matter of right in any action in which a complaint has been served upon the Fund.

In any action to which the Fund is a party, if the responsible party or his guarantor admits liability under this subtitle, the Fund must be dismissed from the action to the extent of the admitted liability. If the Fund has been served a copy of the complaint and all subsequent pleadings in an action, the Fund is bound by any judgment entered therein, whether or not the Fund was a party to the action. If the plaintiff fails to serve a copy of the complaint upon the Fund, the plaintiff may not recover from the Fund any sums not paid by the defendant. If the defendant fails to serve a copy of the initial answer to a complaint upon the Fund the defendant loses his right to limit his liability. If neither the plaintiff nor the defendant serves a copy of the complaint and all subsequent pleadings upon the Fund, the Fund may make a motion for a new trial. The motion must be served not later than ten days after the Fund has received notice of the entry of the judgment in the action, but in no case later than ninety days after the entry of that judgment. The Fund must establish in its motion that, due to the failure of the plaintiff or defendant to serve a copy of any or all of the pleadings upon the Fund, the Fund failed to receive timely notice of one or more issues raised in the action, which might affect the liability of the Fund in any case brought under this subtitle. When the Fund does so, the court must open the judgment, if one has been entered, and take additional pleadings and testimony on the identified issue or issues. The court may amend findings of fact and conclusions of law or make new findings and conclusions and direct the entry of a new judgment in the action.

In any action brought against the Fund the plaintiff may join any responsible party or his guarantor, and the Fund may implead any person, who is or may be liable to the Fund.

A claim may not be presented, nor may any action be commenced for damages recoverable under subtitle A of this Act, unless that claim is presented to, or that action is commenced against, a responsible party or his guarantor or against the Fund as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under Section 403(a), or within six years of the date of the incident which resulted in that loss, whichever is earlier.

SECTION 408—SUBROGATION

Subsection (a) of this section provides that any person, including the Fund, who compensates any claimant for an economic loss compensable under section 403 of this Act shall be subrogated to all rights, claims, and causes of action which that claimant has under subtitle A of this Act.

Subsection (b)(1) requires the Fund, in a case which the Fund has compensated a claimant for a claim presented to the Fund under section 407(b)(1) or 407(c)(1), to recover from the responsible party or guarantor (a) the amount the Fund has paid to the claimant; or (b) interest on that amount for the period beginning on the date on which the claim was first presented by the claimant to the Fund or responsible party or quarantor and ending on the date on which the Fund is paid by the responsible party or guarantor, except that if the Fund offered to the claimant the amount finally paid by the Fund to the claimant in satisfaction of the claim against the Fund the responsible party or guarantor is not liable for interest for the period beginning on the date the Fund made the offer and ending on the date on which the claimant accepted the offer; and (c) all costs incurred by the Fund by result of the claim of the claimant against the Fund and the claim of the Fund agaisnt the responsible party or guarantor.

Subsection (b)(2) of this section requires the Fund, in a case in which the Fund has compensated a claimant for the claim presented to the Fund under section 407(c)(2) of this Act, where the amount the Fund has paid to the claimant exceeds the largest amount, if any, the responsible party or guarantor offered to the claimant in satisfaction of the claim of the claimant against the responsible party or guarantor, to recover from the responsible party or guarantor (a) the amount the Fund has paid the claimant, except that the responsible party or guarantor may contest that the portion of the amount in excess of the settlement offered to the claimant by the responsible party or guarantor; (b) interest on the portion of such excess, if any, which is recovered by the Fund, for a period determined in the same manner as in Section 408 (b)(1)(B); and (c) all costs incurred by the Fund by reason of the claim of the Fund against the responsible party or guarantor.

Subsection (b)(3) of this section requires the Fund, in a case in which the Fund has compensated a claimant for a claim presented to the Fund under section 407(c)(2) where the amount the Fund has paid to the claimant is less than or equal to the largest amount the responsible party or guarantor offered to the claimant in satisfaction of the claim of the claimant against the responsible party or guarantor, to recover from the responsible party or guarantor (a) the amount the Fund has paid to the claimant; and (b) interest (i) for the period beginning on the date on which the claim was presented by the claimant to the responsible party or guarantor and ending on the date on which the responsible party or guarantor offered to the claimant the largest amount referred to in this paragraph, except that if the responsible party or guarantor offered the amount within sixty days after the date upon which the claim of the claimant was presented to the responsible party or guarantor or advertising was commenced under section 406, whichever is later, the responsible party or guarantor is not liable for interest for that period; and (ii) for the period beginning on the date on which the claim of the Fund against the responsible party or guarantor was presented to the responsible party or guarantor to the date on which the Fund is paid, inclusive, except that if the responsible party or guarantor offers to the Fund the amount finally paid to the Fund in satisfaction of the claim of the Fund, the responsible party or guarantor is not liable for interest for the period beginning on the date on which such offer is made and ending on the date on which the Fund accepts that offer, inclusive.

Subsection (b)(4) of this section provides that interest shall be calculated in accordance with section 404(e); and that the costs recoverable by the Fund include, but are not limited to, processing costs, investigating costs, court costs, and attorney's fees.

Subsection (c) of this section requires the Fund to pay over to the claimant that portion of any interest the Fund recovers under subsections (b)(1)(B) and (b)(2)(B) for the period beginning on the date on which the claim of the claimant was first presented to the Fund or the responsible party or guarantor to the date upon which the claimant was paid by the Fund, inclusive.

Subsection (d) of this section provides that the Fund is entitled to recover for all interest and costs specified in subsection (b) of this section without regard to any limitation of liability to which the responsible party or guarantor may be otherwise entitled. The payment of interest and costs by a guarantor may not exceed the amount of financial responsibility which that guarantor has provided for the responsible party for any vessel or facility that was a source of oil pollution for that incident.

SECTION 409—JURISDICTION AND VENUE

Subsection (a) of Section 409 provides that the United States district courts have exclusive original jurisdiction over all controversies arising under subtitles A, B, and C of this Act, without regard to the citizenship of the parties or the amount in controversy.

Subsection (b) states that, unless otherwise provided in this title, venue lies in any district where the injury occurred, or where the responsible party or guarantor resides, may be found, or has his principal office. For purposes of this section, the Fund resides in the District of Columbia.

SECTION 410—RELATIONSHIP TO THE OTHER LAW

Subsection (a) of this section provides for Federal preemption of other laws in three instances. First, except as provided in this title, no action may be brought in any court of the United States, or of any State or political subdivision thereof, for an economic loss compensable under this subtitle. Second, no person may be required to contribute to any fund, the purpose of which is to compensate for damages for an economic loss described in section 403(a), except that, for a period of three years beginning on the effective date on this section, any State which on that date has in effect a statute that requires such contributions may continue to require such contributions within the limits established by the statute as those limits exist on such date. And third, no person may be required to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim compensable under this subtitle.

Subsection (b) provides that a State may impose a tax or fee upon any person or upon oil in order to finance the purchase and prepositioning of oil pollution cleanup and removal equipment or to finance other preparations for responding to a discharge of oil which affects the State.

Subsection (c) provides that nothing in subsection (a) of this section shall prohibit an action by the Fund under any other provision of law to recover compensation paid under this subtitle.

SECTION 411—PENALTIES

Section 411 provides that any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 405 or the regulations issued thereunder or with any denial or detention order is liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty is assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary is required to take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. The Secretary may compromise, modify, or remit with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

SECTION 412—AUTHORIZATION OF APPROPRIATIONS

Section 412 authorizes to be appropriated such sums as may be necessary to carry out this title.

Subtitle B—Marine Oil Pollution Compensation Fund

SECTION 421—MARINE OIL POLLUTION COMPENSATION FUND

Section 421 establishes the Marine Oil Pollution Compensation Fund. Subsection (a) provides that the Fund is to be established in the Treasury and administered by the Secretary. The Fund may sue and be sued in its own name.

Subsection (b) of this section provides that the Fund is to be comosed of the following: (1) premiums paid to the Fund under section 422; (2) amounts recovered, collected, or received on behalf of the Fund under Subtitle A; (3) amounts transferred to the Fund under sections 442(d) and 442(e); (4) income earned on investments under subsection (d); and (5) amounts borrowed under section 423(d).

Subsection (c) of this section provides that the Fund is available for the following purposes: (1) immediate payment of removal costs described in section 401(24)(A) and of reasonable costs incurred by the President or the Governor of a State as a trustee under section 403(a)(3) in assessing damaged natural resources and preparing a restoration and acquisition plan with respect to the damaged natural resources; (2) the payment of claims under subtitle A of this Act for damage which is not otherwise compensated; (3) carrying out subsections (c), (d), (i), and (1) of section 311 of the Federal Water Pollution Control Act with respect to any discharge of oil (as defined in that section); (4) carrying out section 5 of the Intervention of the High Seas Act relating to oil pollution or the substantial threat of oil pollution; (5) the payment of costs of administration of this title; (6) and the payment of contributions to the International Fund in accordance with section 464.

Subsection (d) of this section requires the Secretary to invest the portion of the Fund that is not, in the judgment of the Secretary, required to meet current withdrawals. The investments must in obligations of the United States and obligations guaranteed as to principal and interest by the United States, with maturities suitable for the needs of the Fund and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities, adjusted to the nearest one-eighth of 1 percent. Except as provided in subsection (e), the income on such investments shall be credited to and form a part of the Fund. The Fund may not sell investments in excess of $100,000,000 at one time without the approval of the Secretary of the Treasury. The Secretary of the Treasury may waive the requirement for approval under this subsection for any period of time or under any conditions as the Secretary of the Treasury may decide.

Subsection (e) provides that whenever the amount in the Fund (including the value of obligations held under subsection (d)) exceeds $300,000,000, the amount of any income from these obligations must be rebated to the owners of oil with respect to which premiums were first paid under section 422 and with respect to which a rebate has not previously been made under this subsection. The payment of rebates must be made not less often than annually. If for any reason the income cannot be rebated under this subsection after due diligence to do so, the amount of this income must be retained by the Fund.

SECTION 422—PREMIUMS

Subsection (a) of section 422 requires that a premium of not more than 1.3 cents per barrel be paid into the Fund on all domestic and imported crude oils. Payments are to be made by the following persons: (1) For crude oil or other petroleum products entered into the United States for consumption, use, or warehousing, the premium is to be paid by the person entering the crude oil or other petroleum product into the United States; (2) for crude oil received at a United States refinery, the premium is to be paid by the operator of that refinery; and (3) for crude oil exported from the United States, the premium is to be paid by the person exporting the crude oil.

Subsection (b) of this section provides for a credit against the amount of premiums imposed on any person under subsection (a) which is equal to the amount paid by such person into the Deepwater Port Liability Fund and the Offshore Oil Pollution Compensation Fund. The subsection also authorizes a person entitled to a credit under this provision to transfer that entitlement to another person

Subsection (c) of this section eliminates the possibility of double collection by providing that no premium shall be collected with respect to any oil if the person who would be liable for the premium shows that a premium has been previously imposed with respect to that oil.

Subsection (d) provides that the premium imposed by sebsection (a) is only in effect during any period when the amount in the Fund (including the value of any securities held by the Fund pursuant to Section 421(d)) is less than $200 million.

Section 422 also authorizes the Secretary to establish procedures by regulation for the establishment and collection of the premium. In addition, the Fund is authorized to bring an action in the district court of the United States for the collection of any premium required to be paid.

SECTION 423—LIMITATION ON FUND'S LIABILITY

Subsection (a) of Section 423 provides that any claim filed against the Fund may only be paid out of the Fund. Nothing in this title (or in any amendment made by this title) authorizes the payment by the United States of any additional amount with respect to any claim out of any source other than the Fund.

Subsection (b) of this section prohibits payment of claims from the Fund to the extent that the payment of that claim would result in the Fund having an amount less than $30 million. Removal costs could be paid for out of the Fund, however, even where payment would reduce the Fund below that amount.

Subsection (c) of this section provides for a priority of claims. If at any time the Fund is unable by reason of subsection (b) of this section to pay all of the claims, other than removal costs payable at that time, those claims are to be paid in full in the order in which they were finally determined.

Subsection (d) provides the Secretary with borrowing authority. Total outstanding indebtedness pursuant to such borrowing authority may not exceed $300 million at any time.

Subsection (e) of this section also limits the liability of the Fund under this title with respect to one incident to not more than $200 million. If the Fund is unable to pay all claims with respect to the incident because of the $200 million limitation on liability for an incident, the claims for that incident are to be reduced proportionately.

SECTION 424—SERVICES AND FACILITIES OF OTHER AGENCIES

Section 424 provides that the Fund may, with the consent of the agency concerned, accept and use, on a reimbursable basis, the officers, employees, services, facilities, and information of any agency of the Federal Government.

SECTION 425—PENALTY FOR FAILURE TO PAY PREMIUM

Section 425 provides that any person who fails to pay any premium as required by this title is liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary. The penatly is to be in addition to the premium required to be paid and interest on the premium in an amount equal to the amount the premium would have earned if paid when due and invested in accordance with section 421(d). Upon the failure of any person so liable to pay any penalty, premium, or interest upon demand, the Attorney General may, at the request of the Secretary, bring an action in the name of the Fund against that person for the amount. If the Attorney General does not bring an action within 30 days, the Secretary may do so in the name of the Fund.

SECTION 426—COORDINATION WITH PROVISIONS OF THIS TITLE

Subsection (a) of this section provides that if any provision of this title requires that the balance in any fund (hereinafter in this subsection referreed to as the "transferor fund") is to be transferred to the Marine Oil Pollution Compensation Fund, any claim which arises before the effective date of such transfer (to the extent such claim would have been payable out of the transferor fund), are to be paid out of the Marine Oil Pollution Compensation Fund notwithstanding any of the limitation imposed by this subtitle.

Subsection (b)(1) of this section provides that if the Secretary or the Secretary's delegate determines that there is a Trans-Alaska Pipeline Liability Fund deficit, the premium imposed by section

422 on oil first transported through the Trans-Alaska Pipeline after the date of that determination is to be increased by 2 cents per barrel until the total amount of the increased premiums equals the deficit. Subsection (b)(2) provides that a "Trans-Alaska Pipeline Liability deficit" is the excess (if any) of the amount certified by the Secretary of the Interior as the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund under section 442(a)(3) of this title, over the total amount of the assets of the Trans-Alaska Pipeline Liability Fund as of the effective date of this section.

SECTION 427—DEFINITIONS AND SPECIAL RULES

Subsection (a) provides that the terms defined in subtitle A have the same meanings in this subtitle and further defines the terms "barrel" and "United States". "Barrel" is forty-two United States gallons at sixty degrees Fahrenheit. "United States", in addition to the meaning provided in section 401, includes the Outer Continental Shelf and any foreign trade zone of the United States.

Subsection (b) provides a special rule in the case of any United States refinery which produces natural gasoline from natural gas. In such cases, the gasoline so produced is to be treated as received at the refinery at the time so produced.

Subtitle C—Regulations, effective dates, and savings provisions

SECTION 441—EFFECTIVE DATES

Subsection (a) provides that this section, section 401, section 402, section 412, subtitle B (other than sections 421(c), 422(a), (b), (c), and (e), 423(b), (c), (d), and (e), and 425), section 442(a) (1) and (3), section 443, section 444, and each provision of subtitle A that authorizes the promulgation of regulations will be effective on the date of the enactment of this title.

Subsection (b) provides that subtitle D will take effect on the first date on which both the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage are in force with respect to the United States.

Subsection (c) provides that all other provisions of this title, and the regulations issued under this title, shall take effect 180 days after the date of enactment of this title, except that the penalty prescribed by section 411 for failure to comply with requirements of section 405 or the regulations issued thereunder will not be effective until the ninetieth day after issuance of those regulations or the two hundred and seventieth day after the date of enactment of this title, whichever is earlier.

Subsection (d) provides that any regulation respecting financial responsibility issued pursuant to any provision of law repealed by section 442, and in effect on the day immediately preceding the effective date of section 442, will remain in force until superseded by regulations issued under subtitle A.

SECTION 442—CONFORMING AMENDMENTS

Section 442 provides for conforming amendments to the Trans-Alaska Pipeline Authorization Act, the Intervention on the High Seas Act, Section 311 of the Federal Water Pollution Control Act, the Deepwater Port Act of 1974, and the Outer Continental Shelf Lands Act Amendments of 1978.

SECTION 443—REGULATIONS AND DELEGATION OF AUTHORITY

The Secretary of Transportation may prescribe regulations to carry out the functions of the Secretary of Transportation under this title.

SECTION 444—SEPARABILITY

Section 444 provides that if any provision of this title, or the applicability of any provision of this title, is held invalid, the remainder of the title shall not be affected.

Subtitle D—Implementation of Conventions

SECTION 461—RECOGNITION OF THE INTERNATIONAL FUND

Section 461 provides that the International Oil Pollution Compensation Fund established by article 2 of the International Fund Convention is recognized under the laws of the United States as a legal person and shall have the capacity under the laws of the United States to contract, to acquire and dispose of real and personal property, to institute and be a party to legal proceedings. The Director of the International Fund is recognized as the legal representative of the International Fund. The Director is deemed to have appointed irrevocably the Secretary of State his agent for service of process in any action against the International Fund in any court in the United States.

SECTION 462—SERVICE OF PROCESS AND INTERVENTION

Subsection (a) of this section requries the plaintiff and defendant in any action brought in a court in the United States against the owner of a ship or his guarantor under the Civil Liability Convention to serve a copy of the complaint and any subsequent pleading upon the International Fund and the Marine Oil Pollution Compensation Fund at the same time the complaint or other pleading is served upon the opposing parties.

Subsection (b) of this section provides that the Intrenational Fund may interevene as a party as a matter of right in any action brought in a court in the United States against the owner of a ship or his guarantor under the Civil Liability Convention.

Subsection (c) of this section provides that if the International Fund has been served a copy of the complaint and all subsequent pleadings in an action brought in the United States against the owner of a ship or his guarantor under the Civil Liability Convention, the International Fund is bound by any judgment entered in the action, whether or not the International Fund was a party to the action.

SECTION 463—EXEMPTION FROM TAXATION

Section 463 provides that the International Fund and its assets are exempt from all direct taxation in the United States.

SECTION 464—PAYMENT OF CONTRIBUTIONS

Subsection (a) of this section requires that the amount of any contribution to the International Fund which is required to be made under article 10 of the International Fund Convention by any person with respect to oil received in any port, terminal installation, or other installation located in the United States be paid to the International Fund from the Marine Oil Pollution compensation Fund. Subsection (a) further provides that before the International Fund Convention enters into force with respect to the United States, the President shall make, and deposit with the Secretary-General of the International Maritime Organization, a declaration under article 14 of the International Fund Convention that the United States assumes the obligation to pay contributions under article 10 of the Convention for oil received within the territory of the United States and that contributions will be paid from the Marine Oil Pollution Compensation Fund.

Subsection (b) of this section requires the Secretary, by regulation, to require persons who are required to make contributions with respect to oil received in any port, terminal installation, or other installation in the United States under article 10 of the International Fund Convention to transmit to the Secretary information relating to that oil as may be necessary to carry out subsection (a).

SECTION 465—JURISDICTION OF DISTRICT COURTS

Subsection (a) of section 465 provides that the United States district courts have exclusive original jurisdiction of all controversies arising under the Civil Liability Convention or the International Fund Convention in the territory (including the territorial sea) of the United States, or the exclusive economic zone of the United States established by Proclamation Numbered 5030, dated March 10, 1983. The determination is to be made without regard to the citizenship of the parties or the amount in controversy.

Subsection (b) of this section provides that venue lies in any district in which the injury complained of occured, or in any district in which the defendant resides, may be found, or has his principal office. For purposes of this subsection, the International Fund resides in the District of Columbia.

SECTION 466—RECOGNITION OF JUDGMENTS

Section 466 requires any court of the United States or of a State to recognize any final judgment of a court of any nation which is a party to the Civil Liability Convention or the International Fund Convention in an action for compensation under either convention once that judgment has become enforceable in such nation and is no longer subject to ordinary forms of review. A court of the United States or a State is not required, however, to recognize any judgment of a court of any nation where the judgment is obtained by fraud or where the defendant was denied due process in the underlying proceeding.

SECTION 467—FINANCIAL RESPONSIBILITY

Subsection (a) of section 467 requires the owner of each ship which is documented under the laws of the United States and is carrying more than two thousand tons of oil in bulk as cargo to establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility in amounts sufficient to cover the maximum liability of such owner for pollution damage arising from one incident under the Civil Liability Convention. The Secretary is required to issue a certificate to each owner who complies with this requirement, in the form and manner required by the Civil Liability Convention.

Subsection (b) requires the Secretary to issue to any ship owned by the United States a certificate stating that the ship is owned by the United States and that the ship's liability is covered within the limits of liability prescribed by the Civil Liability Convention.

Subsection (c) requires that the owner of each ship (other than a ship which is documented under the laws of the United States and is carrying more than two thousands tons of oil in bulk as cargo or a ship which is owned by the United States) wherever registered, which is carrying more than two thousands ton of oil in bulk as cargo and which enters or leaves a port or offshore terminal in the United States (including the territorial seas) establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility in amounts sufficient to cover the maximum liability of such owner for pollution damage arising from one incident under the Civil Liability Convention. This subsection further provides that the owner of a ship which is registered in, or flying the flag of, a nation which is a party to the Civil Liability Convention satisfies this requirement by carrying a certificate issued by such nation attesting that insurance or other financial security is in force which meets the requirements of such Convention.

Subsection (d) requires the Secretary of the Treasury to withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any ship which does not have a certificate showing compliance with the requirements of financial responsibility under subsection (a) or (c) of this section.

Subsection (e) provides that the Secretary of the department in which the Coast Guard is operating may (1) deny entry to any facility, to any port or place in the United States, or to the navigable waters, or (2) detain at the facility or at the port or place in the United States, any vessel subject to this section that, upon request, does not produce the certificate required under this section or regulations issued hereunder.

SECTION 468—CIVIL PENALTY

Section 468 provides that any person who, after notice and an opportunity for a hearing, if found to have failed to comply with the requirements of section 464(b) or 467, the regulations issued under either section, or any denial or detention order under section 467(e) is liable to the United States for a civil penalty, not to exceed $10,000 for each violation. the amount of the civil penalty shall be assessed by the Secretary by written notice. The section further provides that in determining the amount of the civil penalty, the Secretary is required to take into account the nature, circumstances, extent , and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and such other matters as justice may require.

This section also provides that the Secretary may compromise, modify, or remit with or without conditions any civil penalty which is subject to imposition or which has been imposed under this subsection. Finally, if any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

SECTION 469—WAIVER OF SOVEREIGN IMMUNITY

This section provides that the United States waives all defenses based on its status as a sovereign State with respect to any controversy arising under the Civil Liability Convention or the International Fund Convention relating to any ship owned by the United States and used for commercial purposes.

SECTION 470—RULES AND REGULATIONS

This section provides that the Secretary may issue such rules and regulations as are necessary to implement the Civil Liability Convention and the International Fund Convention.

SECTION 471—DEFINITIONS

Section 471 provides that the terms defined in subtitle A have the same meanings in this subtitle and further defines "Civil Liability Convention", "International Fund", and "International Fund Convention". The term "Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1984. The term "International Fund" means the International Oil Pollution Compensation Fund established by article 2 of the International Fund Convention. The term "International Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

COMPLIANCE WITH CLAUSE 2(l) OF RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

(1) With reference to clause 2(l)(3)(A) of rule XI of the House of Representatives, the Subcommittee on Investigations and Oversight did not hold hearings on the specific subject matter of the legislation.

That Subcommittee has, however, conducted investigations of the implementation of various aspects of the Superfund Program over the past several years, and has issued a number of reports on these matters.

The Subcommittee on Water Resources held hearings on the bill.

(2) With respect to clause 2(l)(3)(B) of rule XI of the House of Representatives, H.R. 2817, as reported, does not provide new budget authority or increase tax expenditures. Accordingly, a statement pursuant to section 308(a) of the Congressional Budget Act is not required.

(3) With reference to clause 2(l)(3)(C) of rule XI of Rules of the House of Representatives, the Committee has received a report prepared by the Congressional Budget Office under section 403 of the Congressional Budget Act. That report is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 29, 1985.

Hon. JAMES J. HOWARD,
Chairman, Committee on Public Works and Transportation, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 2817, the Superfund Amendments of 1985.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

ERIC HANUSHEK
(For Rudolph G. Penner).

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: H.R. 2817.
2. Bill title: Superfund Amendments of 1985.
3. Bill status: As ordered reported by the House Committee on Public Works and Transportation, October 10, 1985.
4. Bill purpose: H.R. 2817 would reauthorize, amend and expand Public Law 96-510, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The bill would authorize appropriations of $2 billion a year for the period 1986-1990, to be financed through a combination of general fund appropriations (up to $250 million a year) and tax revenues. Of this amount, $180 million a year would be raised through an unspecified new tax to be credited to a newly established Petroleum Release Response Account within the Superfund. The bill would also create a separate Contingency Cleanup Account within the fund to be credited with amounts collected from liable parties for future remedial actions.

Out of the $2 billion authorization, the bill would earmark appropriations of not less than $30 million a year for activities performed by the Agency for Toxic Substances and Disease Registry and a total of $113 million over five years to the Department of Health and Human Services for hazardous substance research and training activities. Another $225 million through 1990 would be spent from the fund for new programs and grants related to activities such as hazardous waste research. The bill would authorize other uses of the fund without specific monetary limits. These uses include cleanup of federal facilities where the responsible agencies have not acted, oversight and enforcement of consent decrees entered into by the United States and liable parties, and grants to citizens groups for technical assistance.

H.R. 2817 would also authorize additional appropriations from the general fund of the Treasury for related activities and studies. The Federal Emergency Management Agency (FEMA) would be authorized to receive $52.1 million a year through 1990 for emergency preparedness and hazard mitigation training and grants. The Environmental Protection Agency (EPA) would receive $4 million to conduct a radon gas demonstration program.

The taxes imposed under CERCLA to fund Superfund expired September 30, 1985. H.R. 2817 would extend through 1990 the taxes on crude oil and chemical feedstocks at existing rates. Further, the bill would establish a new exemption from the feedstock tax for substances used in the production of animal feed. The bill would mandate the imposition of four new taxes—a waste end tax, a broad-based corporate tax, a tax on imported chemical substances, and a tax to fund the cleanup of underground storage tank leaks. The bill specifies that these taxes should increase revenues by $250 million, $720 million, $300 million, and $180 million, respectively, for each fiscal year through 1990. Revenues from these taxes would be automatically appropriated to the Superfund, with revenues from the fourth credited to a special Petroleum Release Response Account within the fund. No details are specified in the bill for these new taxes.

H.R. 2817 would repeal provisions in CERCLA and the Internal Revenue Code pertaining to the Post-Closure Liability Fund and Tax. (These provisions expired September 30, 1985.) The bill would make no provision for the disposition of funds that have been collected under the post-closure process.

Finally, Title IV of the bill is the Comprehensive Oil Pollution Liability and Compensation Act. This act would consolidate federal oil pollution response activities into one entity: a Marine Oil Pollution Compensation Fund (MOPCF), which would be credited with the unobligated balances of the Deepwater Port Liability and Offshore Oil Compensation funds. It would be financed by a premium of up to 1.3 cents per barrel on crude oil received at U.S. refineries and exported, as well as on imports of crude oil and petroleum products.

5. Estimated cost to the Federal Government: The projected budget impact of H.R. 2817 is summarized in the following table.

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Estimated revenues[1]	1,275	1,286	1,294	1,310	1,317
Estimated outlays	1,219	1,700	1,909	2.052	2,052
Estimated excess of outlays over revenues	−56	414	615	742	735

[1] These include revenue targets specified in the bill. Further legislative action would be required to specify the details of the taxes necessary to raise the stated amounts.

These costs fall within budget function 300.

In addition to the costs shown in the table, Section 120 could result in added spending by federal agencies over the next five years to complete remedial actions at federal facilities. Such costs would depend on appropriation actions, but to meet the targets in the bill, additional spending of between $1 billion and $2.5 billion a year may be required through 1990.

The budget impact of some provisions of the bill depends on highly uncertain future events and cannot presently be estimated. The above table, therefore, does not include spending for the Contingency Cleanup Account, for EPA's indemnification of hazardous response contractors, for court action resulting from citizen suits or judicial review of EPA actions, for claims paid out of the Marine Oil Pollution Compensation Fund for catastrophic spills, and for future contributions to the International Fund.

SUPERFUND AMENDMENTS OF 1985

Basis of estimate: For purposes of this estimate, it is assumed that the new taxes will be imposed at rates sufficient to raise the revenues specified by the bill for each fiscal year. Revenues for crude oil and chemical feedstock have been estimated on the basis of information obtained from the Treasury Department.

Authorization levels for FEMA and EPA programs that are not funded by Superfund revenues are those stated in the bill. The cost estimate does not include any estimated costs for provisions that may require additional appropriations to the EPA (for certain required oversight activities and studies) and to other agencies such as the Department of Labor (to promulgate worker protection standards). CBO has been unable to obtain sufficient information to estimate in detail the cost of these provisions, but they are not expected to add substantially to the cost of the bill.

Outlays from the Superfund have been estimated, on the basis of historical spending patterns and on information obtained from the EPA, to reflect the deadlines stated in the bill. For purposes of this estimate, it is assumed that the EPA will be able to hire, purchase or otherwise contract for the qualified personnel and technical resources that will be required to carry out the provisions of H.R. 2817, including the mandatory schedule established in Section 104.

General fund appropriations to the Superfund would be reduced each year by an amount equal to the prior year's recoveries from responsible parties. Such offsets are estimated to total $225 million through fiscal year 1990.

The projected budget impact of the Superfund amendments is summarized in the table below.

BUDGET IMPACT OF THE SUPERFUND AMENDMENTS OF 1985

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Spending effects:					
Authorization Level	2,056	2,052	2,052	2,052	2,052
Estimated Outlays	1,222	1,741	1,950	2,052	2,052
Revenue effects:					
Estimated Revenues, Gross Excise Taxes [1]	1,713	1,740	1,750	1,759	1,768
Estimated Revenues, Net of Income Tax Offsets [1]	1,285	1,305	1,313	1,319	1,326

BUDGET IMPACT OF THE SUPERFUND AMENDMENTS OF 1985—Continued

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Total budget impact:					
Estimated Revenues	1,285	1,305	1,313	1,319	1,326
Estimate Outlays	1,222	1,741	1,950	2,052	2,052
Estimated Increase or Decrease (−) in Deficit	−63	436	637	733	726

[1] These include revenue targets specified in the bill. Further legislative action would be required to specify the details of the taxes necessary to raise the stated amounts.

When compared to the CBO scorekeeping baseline, the net revenue increase under H.R. 2817 would be $1,087 million in each fiscal year. The increase relative to the baseline is smaller than that shown in the table above because the baseline assumes extension of Superfund taxes at current rates.

The above tables do not reflect any budgetary effects of the bill's Contingency Cleanup Account provision. Under Section 122, "Settlements," the EPA may require parties who are granted a liability limitation in their settlement agreements to pay future liability premiums into the separate account. Sums collected would be used to cover future cleanup costs. CBO expects this provision to result in increased federal receipts to the fund in the early years and in possible increases in fund outlays in later years (as new conditions are discovered that necessitate further cleanup efforts). The net effect, however, would depend on future events that cannot be foreseen.

Section 120 of the bill would set requirements for handling hazardous waste sites at federal facilities. Each federal agency would be required to include in its annual budget request sufficient funds to complete remedial actions at these sites. The ultimate budget impact of this section is uncertain and would depend on appropriation actions. Because the agencies generally have existing authority to perform these duties, the net effect over time of the bill's provisions, when compared to current law, is minimal. However, the schedule for federal actions required by the bill could affect the timing of federal outlays, assuming that agencies are able to speed up their activities to accommodate the bill's stringent deadlines. Most federal agencies have already begun to identify, assess and in some cases clean up their hazardous waste sites. While the budgets of these agencies include money for these activities, however, the programs are largely in preliminary stages and do not contain amounts large enough to fully address all sites. For example, it is possible that the Department of the Interior's total cleanup costs could exceed $500 million. To date, however, only a few million dollars have actually been budgeted, mainly for preliminary work. If the timetables established by H.R. 2817 are to be met by the Interior Department, appropriations for this purpose would have to total over $500 million over the next five years. Similarly, the Department of Defense (DoD) estimates the total cost for site cleanup activities to be $5–10 billion over the next 10 years, or at least $500 million a year. (In 1985, $314 million was appropriated to the DoD for this purpose, and about $350 million is authorized for fiscal year 1986.) If the bill's cleanup schedules are to be met, the 10-year anticipated cleanup period would be compressed into about one-half that time, for annual expenditures of at least $1 billion. Other affected federal agencies include the Department of Energy, which has estimated its potential costs to range between $1 billion and $3 billion.

While the primary result of the bill's specified timetable may be a change in the timing of already-anticipated federal expenditures, other requirements may result in an absolute increase in federal site cleanup costs. Under Section 120, federal agencies would be required to obey all state laws, including permit requirements, for onsight treatment of hazardous wastes. In issuing permits, states would be able to require cleanup standards and emissions limitations that may be more stringent than federal standards. The effect of this provision is very uncertain because we do not know which sites may be affected and what standards individual negotiations might produce.

The amended bill would authorize the EPA to indemnify its hazardous response action contractors against any liability arising from a contractor's performance unless gross negligence or intentional misconduct is involved. If claims were to arise from a settlement or legal costs if it has entered into an indemnification agreement. As is often the case in liability suits, potential costs could be substantial. However, because this authority is discretionary and because the nature of future legal action is impossible to predict, we cannot estimate the potential exposure of the federal government.

Section 113 of the bill would provide for judicial review of the hazardous substance response actions undertaken or ordered to be undertaken by the EPA. In certain cases, courts would be authorized to award legal costs, some response costs and compensatory damages to an objecting party if the EPA's actions or orders are found to have been arbitrary or capricious. Sums awarded would not be paid from the Superfund. If this provision results in judgments against the agency and reimbursements that would not have otherwise occurred, federal outlays would be increased.

Finally, H.R. 2817 would create a new Section 310, "Citizens Suits," within CERCLA. The section would permit a private person to sue in federal courts any other person, including (with certain limitations) a governmental entity, for violations of the act or in conjunction with hazardous substance releases. Suits may also be brought against the EPA or other federal agencies for failure to perform non-discretionary duties.

In the case of suits against federal, state, or local government agencies that own or operate hazardous waste sites, the court would have the authority to enforce CERCLA requirements and, where substantial and imminent endangerment is involved, to require any necessary action to abate a release. Complaints of nonperformance of duty against the EPA or other federal agencies could be remedied by ordering the agency to perform the act or duty involved.

Because it may be possible to obtain such remedies in a state court or through some other cause of action, it is uncertain whether Section 310 would have any net effect on federal, state, or local government expenditures. Moreover, to the extent that a court-ordered action has already been planned by the affected agency, the result may only be a change in the timing of outlays. Regardless of the outcome of such cases, the provision may increase the caseload of federal courts by either encouraging new suits or attracting plaintiffs who otherwise would have brought suit under some other cause of action in a state court. This could increase the costs of the federal judicial system and of the Department of Justice. The uncertainty surrounding such future events makes it impossible to estimate these costs.

COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT

Based on information obtained from the U.S. Coast Guard, CBO estimates that the MOPCF's beginning balance after transfers from existing funds would be approximately $105 million, assuming an effective date for the transfers of March 30, 1986. If the transfers occur at a later point in the fiscal year, this balance would most likely increase by a very small amount. These transfers will have no net impact on the federal budget.

CBO estimates that gross collections, before credits, from the 1.3 cents per barrel premium would be about $27 million in fiscal year 1986 (based on an effective date of March 30, 1986) and would average about $65 million a year thereafter through 1990. Fund receipts in the first few years of collection would be reduced by an estimated $73 million, because the bill grants credit for sums paid to the Deepwater Port Liability and Offshore Oil Compensation funds. These credits are assumed to be taken by the end of fiscal year 1988. At that time, the fund balance is likely to reach $200 million, and the premium payments would cease. As a result, premium receipts are estimated to be $3 million in 1986, and $41 million each in 1987 and 1988. If the provisions of Section 422 do not take effect until after March 30, 1986, gross and net collections would be somewhat lower for fiscal year 1986.

The bill would repeal the current tax on Outer Continental Shelf oil production, estimated to produce gross revenues of about $12 million annually. The net revenue loss from repealing this tax is partially offset by resulting income tax changes, assuming constant GNP levels. The projected budget impact of the Comprehensive Oil Pollution Liability and Compensation Act is summarized in the table below.

BUDGET IMPACT OF THE COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Estimated outlay decrease:					
From new premium	−3	−41	−41		
Estimated revenue effects:					
From repeal of existing tax (gross)	−12	−12	−12	−12	−12
From offsetting income tax changes	2	−7	−7	3	3
Net revenue effect	−10	−19	−19	−9	−9
Net Increase or Decrease (−) to Deficit	7	−22	−22	9	9

Outlays from the MOPCF are impossible to predict with precision, because significant oil spills are rare and unpredictable. No fund payments for spills at offshore or deepwater port facilities have been made since those funds were established. While thousands of spills from vessels may occur in any year, most are quickly cleaned up by the responsible parties, and most are so small that their total costs, including claims, would not be high enough to trigger the bill's specified liability limitations. While major spills have been declining generally, they increased in 1984 to four from only one the year before. Obligations from the 311k fund totaled $130 million between 1971 and 1984, for an average annual cost of $10 million, but obligations ranged from $280 thousand in 1971 to over $25 million in 1980. Obligations in 1985 were about $4.8 million. Typically the Coast Guard recovers about one-half of the amount it spends on cleanup. If recent experience continues for all types of spills (that is, no major facilities spills and between one and four major vessel spills a year), it is likely that no more than $4 million (in fiscal year 1985 dollars) would be spent from the fund on cleanup activities each year, about one-half of which would be reimbursed by responsible parties. Since such outlays would occur under current law from the 311k fund, they represent no net increase in federal spending.

Unlike the 311k fund, the MOPCF will also pay claims for losses when responsible parties cannot be located or do not pay, or when claims exceed liability limitations. Outlays for this type of expenditure are even more difficult to estimate: a spill costing only minor amounts to clean may generate millions of dollars in damage claims. For example, the Alvenus spill off of the Louisiana coast in 1984 cost the spiller less than $5 million in cleanup costs, yet generated damage claims of $100 million. No estimate of payments for claims is included in the cost estimate table.

Administrative expenses paid from the fund are estimated to average about $400,000 a year. An additional $2 million could be spent on start-up activities during fiscal years 1986 and 1987, including expenses incurred by the Secretary of Transportation and reimbursed from the fund.

If catastrophic spills do occur, outlays would be limited to amounts in the fund at the time claims are made or costs are incurred, plus potential borrowings of up to $300 million from the Treasury.

Title IV would provide that the bill's damage and liability provisions would not apply during any period in which both the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984, are in force with respect to the United States. The bill would further provide that, if and when these conventions are ratified by the United States, annual contributions to the International Fund due from U.S. interests would be paid from the MOPCF. Coast Guard analyses of various international scenarios indicate an expected contribution of about $8 million annually during the 1990s, if the International Convention is ratified. MOPCF administrative expenses of about $0.4 million a year would continue to be incurred, but expected net cleanup costs of $2 million a year could be partially offset by the contribution because some of these expenses would then be reimbursed from the International Fund. Net costs to the MOPCF would be less than $10 million a year in the absence of any major spills.

6. Estimated cost to state and local governments: CBO has not completed its estimate of the costs to state and local governments.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Deb Reis.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

(4) With reference to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

(5) With reference to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the following information is provided: The effect of carrying out H.R. 2817, as reported, should be minimal with respect to prices and costs.

COST OF LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires a statement of the estimated costs to the United States which would be incurred in carrying out H.R. 2817, as reported, in Fiscal Year 1986, and each of the following five years. However, under paragraph (d) of clause 7, its provisions do not apply when the Committee has received a timely report from the Congressional Budget Office.

COMMITTEE ACTION AND VOTE

The Committee, in compliance with rule XI(2)(l)(2)(A) of the Rules of the House of Representatives, reports favorably the bill H.R. 3678. The Committee ordered the bill reported by voice vote.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980

* * * * * * *

TITLE I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

DEFINITIONS

SEC. 101. *(a) IN GENERAL.*—For purpose of this title, the term—

(1) "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(2) "Administrator" means the Administrator of the United States Environmental Protection Agency, *except as provided in subsection (b);*

(3) "barrel" means forty-two United States gallons at sixty degrees Fahrenheit;

(4) "claim" means a demand in writing for a sum certain;

(5) "claimant" means any person who presents a claim for compensation under this Act;

(6) "damages" means damages for injury or loss of natural resources as set forth in section 107(a) or 111(b) of this Act;

(7) "drinking water supply" means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act) or as drinking water by one or more individuals;

(8) "environment" means (A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Fishery Conservation and Management Act of 1976, and (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States;

(9) "facility" means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel;

(10) "federally permitted release" means (A) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act, (B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit, (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems, (D) discharges in compliance with a legally enforceable permit under section 404 of the Federal Water Pollution Control Act, (E) releases in compliance with a legally enforceable final permit issued pursuant to section 3005 (a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases, (F) any release in compliance with a legally enforceable permit issued under section 102 or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, (G) any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator of the Environmental Protection Agency) pursuant to part C of the Safe Drinking Water Act, (H) any emission into the air subject to a permit or control regulation under section 111, section 112, title I part C, title I part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator of the Environmental Protection Agency), including any schedule or waiver granted, promulgated, or approved under these sections, (I) any injection of fluids or other materials authorized under applicable State law (i) for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, (ii) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or (iii) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected, (J) the introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307 (b) or (c) of the Clean Water Act and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act, and (K) any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954;

(11) "Fund" or "Trust Fund" means the Hazardous Substance Response Fund established by section 221 of this Act [or, in the case of a hazardous waste disposal facility for which liability has been transferred under section 107(k) of this Act, the Post-closure Liability Fund established by section 232 of this Act;]*;*

(12) "ground water" means water in a saturated zone or stratum beneath the surface of land or water;

(13) "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act;

(14) "hazardous substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas);

(15) "navigable waters" or "navigable waters of the United States" means the waters of the United States, including the territorial seas;

(16) "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, [or] any foreign government, *any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe;*

(17) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(18) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land or nonnavigable waters within the United States;

(19) "otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided by international agreement to which the United States is a party;

(20)(A) "owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and (iii) in the case of any abandoned facility, any person who owned, operated, or otherwise controlled activities at such facility immediately prior to such abandonment. Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility;

(B) in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier and except as provided in section 107(a) (3) or (4) of this Act, (i) the term "owner or operator" shall mean such common carrier or other bona fide for hire carrier acting as an independent contractor during such transportation, (ii) the shipper of such hazardous substance shall not be considered to have caused or contributed to any release during such transportation which resulted solely from circumstances or conditions beyond his control;

(C) in the case of a hazardous substance which has been delivered by a common or contract carrier to a disposal or treatment facility and except as provided in section 107(a) (3) or (4) (i) the term "owner or operator" shall not include such common or contract carrier, and (ii) such common or contract carrier shall not be considered to have caused or contributed to any release at such disposal or treatment facility resulting from circumstances or conditions beyond its control;

(21) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body;

(22) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment *(including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant)*, but excludes (A) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons, (B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, (C) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purposes of section 104 of this title or any other response action, any release of source byproduct,

or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978, and (D) the normal application of fertilizer;

(23) "remove" or "removal" means the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of this Act, and any emergency assistance which may be provided under the Disaster Relief Act of 1974;

(24) "remedy" or "remedial action" means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances [or] *and associated* contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the [President] *Administrator* determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or [welfare. The term does not include offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials unless the President determines that such actions (A) are more cost-effective than other remedial actions, (B) will create new capacity to manage, in compliance with subtitle C of the Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility, or (C) are necessary to protect public health or welfare or the environment

from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials;**]** *welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials;*

(25) "respond" or "response" means remove, removal, remedy, **[**and**]** remedial action, *and enforcement activities related thereto;*

(26) "transport" or "transportation" means the movement of a hazardous substance by any mode, including pipeline (as defined in the Pipeline Safety Act), and in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier, the term "transport" or "transportation" shall include any stoppage in transit which is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance;

(27) "United States" and "State" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction;

(28) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water;

(29) "disposal", "hazardous waste", and "treatment" shall have the meaning provided in section 1004 of the Solid Waste Disposal Act;

(30) "territorial sea" and "contiguous zone" shall have the meaning provided in section 502 of the Federal Water Pollution Control Act.

(31) "national contingency plan" means the national contingency plan published under section 311(c) of the Federal Water Pollution Control Act or revised pursuant to section 105 of this Act; **[**and**]**

(32) "liable" or "liability" under this title shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act**[**.**]**; *and*

(33) "pollutant or contaminant" shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring; except that the term "pollutant or contaminant" shall not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) and shall not in-

clude natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

(b) USE OF TERM "ADMINISTRATOR".—

(1) DELEGATIONS RETAINED.—Where, before the date of the enactment of the Superfund Amendments of 1985, any authority under this Act was delegated to the head of any other department, agency, or instrumentality of the United States (or where any such authority has been retained by the President), the term "Administrator" refers to the head of such department, agency, or instrumentality (or to the President in the case of an authority retained by the President).

(2) EXCEPTION FOR FEDERAL FACILITIES.—Paragraph (1) shall not apply to any authority delegated to a department agency or instrumentality with respect to any facility owned or operated by that department, agency, or instrumentality. With respect to such facilities, the term "Administrator" when used in this Act refers to the Administrator of the Environmental Protection Agency.

REPORTABLE QUANTITIES AND ADDITIONAL DESIGNATIONS

SEC. 102. (a) The Administrator shall promulgate and revise as may be appropriate, regulations designating as hazardous substances, in addition to those referred to in section 101(14) of this title, such elements, compounds, mixtures, solutions, and substances which, when released into the environment may present substantial danger to the public health or welfare or the environment, and shall promulgate regulations establishing that quantity of any hazardous substance the release of which shall be reported pursuant to section 103 of this title. The Administrator may determine that one single quantity shall be the reportable quantity for any hazardous substance, regardless of the medium into which the hazardous substance is released. *The Administrator shall promulgate regulations establishing such reportable quantities for all hazardous substances by December 31, 1986.*

(b) Unless and until superseded by regulations establishing a reportable quantity under subsection (a) of this section for any hazardous substance as defined in section 101(14) of this title, (1) a quantity of one pound, or (2) for those hazardous substances for which reportable quantities have been established pursuant to section 311(b)(4) of the Federal Water Pollution Control Act, such reportable quantity, shall be deemed that quantity, the release of which requires notification pursuant to section 103 (a) or (b) of this title.

NOTICES, PENALTIES

SEC. 103. (a) Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to section 102 of this title, immediately notify the National Response Center established under the Clean Water Act of such release. The National Response Center shall convey the notification expeditiously to all appropriate Government agencies, including the Governor of any affected State.

[The bill amends section 103(b), in part, by adjusting the left hand margin of the text following the words "federally permitted release," so that there is no indentation.]

(b) Any person—

(1) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or

(2) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

(3) in charge of a facility from which a hazardous substance is released, other than a federally permitted release,

in a quantity equal to or greater than that determined pursuant to section 102 of this title who fails to notify immediately the appropriate agency of the United States Government as soon as he has knowledge of such release *or who submits in such a notification any information which he knows to be false or misleading* shall, upon conviction, be fined **[**not more than $10,000 or imprisoned for not more than one year, or both.**]** *in accordance with section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisoned for not more than three years, or both. Any such person shall also be subject to a civil penalty of not more than $25,000 for each day during which such failure continues.* Notification received pursuant to this **[**paragraph**]** *subsection* or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(c) Within one hundred and eighty days after the enactment of this Act, any person who owns or operates or who at the time of disposal owned or operated, or who accepted hazardous substances for transport and selected, a facility at which hazardous substances (as defined in section 101(14)(C) of this title) are or have been stored, treated, or disposed of shall, unless such facility has a permit issued under, or has been accorded interim status under, subtitle C of the Solid Waste Disposal Act, notify the Administrator of the Environmental Protection Agency of the existence of such facility, specifying the amount and type of any hazardous substance to be found there, and any known, suspected, or likely releases of such substances from such facility. The Administrator may prescribe in greater detail the manner and form of the notice and the information included. The Administrator shall notify the affected State agency, or any department designated by the Governor to receive such notice, of the existence of such facility. Any person who knowingly fails to notify the Administrator of the existence of any such facility shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. In addition, any such person who knowingly fails to provide the notice required by this subsection shall not be entitled to any limitation of liability or to any defenses to liability set out in section 107 of this Act: *Provided, however,* That notification under this subsection is not required for any facility which would be reportable hereunder solely as a result of any stoppage in transit which is temporary, incidental to the transportation movement, or at the ordinary operating convenience of a common or contract carrier, and such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(d)(1) The Administrator of the Environmental Protection Agency is authorized to promulgate rules and regulations specifying, with respect to—

(A) the location, title, or condition of a facility, and

(B) the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited in a facility;

the records which shall be retained by any person required to provide the notification of a facility set out in subsection (c) of this section. Such specification shall be in accordance with the provisions of this subsection.

(2) Beginning with the date of enactment of this Act, for fifty years thereafter or for fifty years after the date of establishment of a record (whichever is later), or at any such earlier time as a waiver if obtained under paragraph (3) of this subsection, it shall be unlawful for any such person knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any records identified in paragraph (1) of this subsection. Any person who violates this paragraph shall, upon conviction, be fined [not more than $20,000, or imprisoned for not more than one year, or both.] *in accordance with section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisoned for not more than three years, or both. Any such person shall also be subject to a civil penalty of not more than $25,000 for each day during which such violation continues.*

(3) At any time prior to the date which occurs fifty years after the date of enactment of this Act, any person identified under paragraph (1) of this subsection may apply to the Administrator of the Environmental Protection Agency for a waiver of the provisions of the first sentence of paragraph (2) of this subsection. The Administrator is authorized to grant such waiver if, in his discretion, such waiver would not unreasonably interfere with the attainment of the purposes and provisions of this Act. The Administrator shall promulgate rules and regulations regarding such a waiver so as to inform parties of the proper application procedure and conditions for approval of such a waiver.

(4) Notwithstanding the provisions of this subsection, the Administrator of the Environmental Protection Agency may in his discretion require any such person to retain any record identified pursuant to paragraph (1) of this subsection for such a time period in excess of the period specified in paragraph (2) of this subsection as

the Administrator determines to be necessary to protect the public health or welfare.

(e) This section shall not apply to the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act or to the handling and storage of such a pesticide product by an agricultural producer.

(f) No notification shall be required under subsection (a) or (b) of this section for any release of a hazardous substance—

(1) which is required to be reported (or specifically exempted from a requirement for reporting) under subtitle C of the Solid Waste Disposal Act or regulations thereunder and which has been reported to the National Response Center, or

(2) which is a continuous release, stable in quantity and rate, and is—

(A) from a facility for which notification has been given under subsection (c) of this section, or

(B) a release of which notification has been given under subsections (a) and (b) of this section for a period sufficient to establish the continuity, quantity, and regularity of such release:

Provided, That notification in accordance with subsections (a) and (b) of this paragraph shall be given for releases subject to this paragraph annually, or at such time as there is any statistically significant increase in the quantity of any hazardous substance or constituent thereof released, above that previously reported or occurring.

RESPONSE AUTHORITIES

SEC. 104. (a)(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the **[**President**]** *Administrator* is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the **[**President**]** *Administrator* deems necessary to protect the public health or welfare or the environment.**[**, unless the President determines that such removal and remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible party.**]** *When the Administrator determines that such removal and remedial action will be done properly and promptly by the owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible party, the Administrator shall require such owner or operator or party to carry out the removal or remedial action in accordance with section 122. In no event shall the Administrator permit the owner or operator of the vessel or facility from which the release or threat of release emanates, or any other responsible party, to con-*

duct a remedial investigation to determine the nature and extent of the problem presented by the release or threat of release or a feasibility study of alternatives to remedy the problem presented by the release or threat of release. The Administrator shall give primary attention to those releases which he deems may present a public health threat.

[(2) For the purposes of this section, "pollutant or contaminant" shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as hazardous substances under section 101(14) (A) through (F) of this title, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).]

(2) Removal Action.—Any removal action undertaken by the Administrator under this subsection (or by any other person referred to in section 122) shall contribute to the efficient performance of any long term remedial action to the maximum extent practicable with respect to the release or threatened release concerned.

(b) Whenever the [President] *Administrator* is authorized to act pursuant to subsection (a) of this section, or whenever the [President] *Administrator* has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the [President] *Administrator* may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this Act.

(c)(1) Unless (A) the [President] *Administrator* finds that (i) continued response actions are immediately required to prevent, limit, or mitigate an emergency, (ii) there is an immediate risk to public health or welfare or the environment, and (iii) such assistance will not otherwise be provided on a timely basis, or (B) the [President] *Administrator* has determined the appropriate remedial actions pursuant to paragraph (2) of this subsection and the State or States in which the source of the release is located have complied with the requirements of paragraph (3) of this subsection, *or (C) continued response action is otherwise appropriate and consistent with the remedial action to be taken,* obligations from the Fund, other than those authorized by subsection (b) of this section, shall not continue after [$1,000,000] *$2,000,000* has been obligated for response actions or [six] *12* months has elapsed from the date of initial response to a release or threatened release of hazardous substances.

(2) The [President] *Administrator* shall consult with the affected State or States before determining any appropriate remedial action to be taken pursuant to the authority granted under subsection (a) of this section.

(3) The [President] *Administrator* shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the [President] *Administrator* providing assurances deemed adequate by the [President] *Administrator* that (A) the State will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions as determined by the [President] *Administrator*; (B) the State will assure the availability of a hazardous waste disposal facility acceptable to the [President] *Administrator* and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act for any necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; [and (C)] *(C) the State will assure the availability of hazardous waste treatment or disposal facilities which (i) are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority, (ii) are acceptable to the Administrator, (iii) are in compliance with the requirements of subtitle C of the Solid Waste Disposal Act, and (iv) have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed; and (D)* the State will pay or assure payment of (i) 10 per centum of the costs of the remedial action, including all future maintenance, or [(ii) at least 50 per centum or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof. The President shall grant the State a credit against the share of the costs for which it is responsible under this paragraph for any documented direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before the date of enactment of this Act for cost-eligible response actions and claims for damages compensable under section 111 of this title relating to the specific release in question: *Provided, however,* That in no event shall the amount of the credit granted exceed the total response costs relating to the release.] *(ii) 50 percent of any sums expended in response to a release at a facility that was owned and operated at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof.*

(4) State Credits.—

(A) Granting of credit.—The Administrator shall grant a State a credit against the share of the costs, for which it is re-

sponsible under paragraph (3) with respect to a facility listed on the National Priorities List under the National Contingency Plan, for amounts expended by a State for remedial action at such facility pursuant to a contract or cooperative agreement with the Administrator. The credit under this paragraph shall be limited to those State expenses which the Administrator determines to be reasonable, documented, direct out-of-pocket expenditures of non-Federal funds.

(B) EXPENSES BEFORE LISTING OR AGREEMENT.—The credit under this paragraph shall include expenses for remedial action at a facility incurred before the listing of the facility on the National Priorities List or before a contract or cooperative agreement is entered into under subsection (d) for the facility if—

(i) after such expenses are incurred the facility is listed on such list and a contract or cooperative agreement is entered into for the facility, and

(ii) the Administrator determines that such expenses would have been credited to the State under subparagraph (A) had the expenditures been made after listing of the facility on such list and after the date on which such contract or cooperative agreement is entered into.

(C) ADMINISTRATIVE EXPENSES.—The credit under this paragraph shall include amounts expended or obligated by the State or political subdivision for administration of this Act. The Administrator shall promulgate such rules as may be necessary to implement this subparagraph.

(D) RESPONSE ACTIONS BETWEEN 1978 AND 1980.—The credit under this paragraph shall include funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 111.

(E) STATE EXPENSES AFTER DEC. 11, 1980, IN EXCESS OF 10 PERCENT OF COSTS.—The credit under this paragraph shall include 90 percent of State expenses incurred at a facility owned, but not operated, by such State or by a political subdivision thereof. Such credit applies only to expenses incurred pursuant to a contract or cooperative agreement under subsection (d) and only to expenses incurred after December 11, 1980, but before the date of the enactment of this paragraph.

(F) ITEM-BY-ITEM APPROVAL.—In the case of expenditures made after the date of the enactment of this paragraph, the Administrator may require prior approval of each item of expenditure as a condition of granting a credit under this paragraph.

(G) USE OF CREDITS.—Credits granted under this paragraph for funds expended with respect to a facility may be used by the State to reduce all or part of the share of costs otherwise required to be paid by the State under paragraph (3) in connection with remedial actions (and future maintenance thereof) at such facility. If the amount of funds for which credit is allowed under this paragraph exceeds such share of costs for such facility, the State may use the amount of such excess to reduce all or part of the share of such costs at other facilities in that State. A credit shall not entitle the State to any direct payment.

[(4) The President shall select appropriate remedial actions determined to be necessary to carry out this section which are to the extent practicable in accordance with the national contingency plan and which provide for that cost-effective response which provides a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund established under title II of this Act to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the need for immediate action.]

(5) SELECTION OF REMEDIAL ACTION.—The Administrator shall select the remedial actions to carry out this section in accordance with section 121 of this Act (relating to cleanup standards).

(6) OPERATION AND MAINTENANCE.—For the purposes of paragraph (3) of this subsection, in the case of ground or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore ground and surface water quality to a level that assures protection of human health and the environment. Activities required to maintain the effectiveness of such measures following the completion of remedial action shall be considered maintenance.

(d)[(1) Where the President determines that a State or political subdivision thereof has the capability to carry out any or all of the actions authorized in this section, the President may, in his discretion, enter into a contract or cooperative agreement with such State or political subdivision to take such actions in accordance with criteria and priorities established pursuant to section 105(8) of this title and to be reimbursed for the reasonable response costs thereof from the Fund. Any contract made hereunder shall be subject to the cost-sharing provisions of subsection (c) of this section.] *COOPERATIVE AGREEMENTS WITH STATES.—*

(1) IN GENERAL.—

(A) STATE APPLICATIONS.—A State or political subdivision thereof may apply to the Administrator to carry out actions authorized in this section. If the Administrator determines that the State or political subdivision has the capability to carry out any or all of such actions in accordance with the criteria and priorities established pursuant to section 105(a)(8) and to carry out related enforcement actions, the Administrator may enter into a contract or cooperative agreement with the State or political subdivision to carry out such actions. The Administrator shall make a determination regarding such an application within 90 days after the Administrator receives the application.

(B) TERMS AND CONDITIONS.—A contract or cooperative agreement under this paragraph shall be subject to such terms and conditions as the Administrator may prescribe. The contract or cooperative agreement may cover a specific facility or specific facilities.

(C) GRANTS.—To assist a State or political subdivision determined to have the capability to carry out actions under subparagraph (A) of this paragraph, the Administrator may make grants from amounts in the Fund to a State or political subdivision thereof with which the Administra-

tor has entered into a contract or cooperative agreement under this paragraph. Such grants shall be in accordance with the terms and conditions of such contract or cooperative agreement and shall be in amounts not to exceed the Federal share of the cost of the actions to be carried out by the State or political subdivision under the contract or agreement.

(D) REIMBURSEMENTS.—Any State which expended funds during the period beginning September 30, 1985, and ending on the date of the enactment of this subparagraph for response actions at any site included on the National Priorities List and subject to a cooperative agreement under this Act shall be reimbursed for the share of costs of such actions for which the Federal Government is responsible under this Act.

(2) If the [President] *Administrator* enters into a cost-sharing agreement pursuant to subsection (c) of this section or a contract or cooperative agreement pursuant to this subsection, and the State or political subdivision thereof fails to comply with any requirements of the contract, the [President] *Administrator* may, after providing sixty days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the State or political subdivision.

(3) Where a State or a political subdivision thereof is acting in behalf of the [President] *Administrator*, the [President] *Administrator* is authorized to provide technical and legal assistance in the administration and enforcement of any contract or subcontract in connection with response actions assisted under this title, and to intervene in any civil action involving the enforcement of such contract or subcontract.

(4) Where two or more noncontiguous facilities are reasonably related on the basis of geography, or on the basis of the threat, or potential threat to the public health or welfare or the environment, the [President] *Administrator* may, in his discretion, treat these related facilities as one for purposes of this section.

[(e)(1) For purposes of assisting in determining the need for response to a release under this title or enforcing the provisions of this title, any person who stores, treats, or disposes of, or, where necessary to ascertain facts not available at the facility where such hazardous substances are located, who generates, transports, or otherwise handles or has handled, hazardous substances shall, upon request of any officer, employee, or representative of the President, duly designated by the President, or upon request of any duly designated officer, employee, or representative of a State, where appropriate, furnish information relating to such substances and permit such person at all reasonable times to have access to, and to copy all records relating to such substances. For the purposes specified in the preceding sentence, such officers, employees, or representatives are authorized—

[(A) to enter at reasonable times any establishment or other place where such hazardous substances are or have been generated, stored, treated, or disposed of, or transported from;

[(B) to inspect and obtain samples from any person of any such substance and samples of any containers or labeling for such substances. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or person in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume of weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or person in charge.]

(e) INFORMATION GATHERING AND ACCESS.—

(1) ACTION AUTHORIZED.—Any officer, employee, or representative of the Administrator, duly designated by the Administrator, is authorized to take action under paragraph (2), (3), or (4) (or any combination thereof) at a facility, establishment, place, or property, or, in the case of paragraph (3) or (4), at any facility, establishment, place, property, or location which is adjacent to the establishment, place, property, or location referred to in such paragraph (3) or (4). Any duly designated officer, employee, or representative of a State under a contract or cooperative agreement under subsection (d)(1) is also authorized to take such action. The authority of paragraphs (3) and (4) may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant at such facility, establishment, place, property, or location. The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this title.

(2) ACCESS TO INFORMATION.—Any officer, employee, or representative described to in paragraph (1) may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

(A) The identification or nature of materials generated, treated, stored, transported to, or disposed of at a facility.

(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a facility.

(C) Information relating to the ability of a person to pay for or to perform a cleanup.

In addition, upon reasonable notice, such person either shall grant any such officer, employee, or representative access at all reasonable times to any facility, establishment, place, or property to inspect or copy all documents or records relating to such matters or shall copy and furnish to the officer, employee, or representative all such documents or records, at the option of such person.

(3) ENTRY.—Any officer, employee, or representative described in paragraph (1) is authorized to enter at reasonable times any of the following:

(A) Any facility, establishment, or other place or property where any hazardous substance or pollutant or contami-

nant, may be, or has been generated, stored, treated, disposed of, or transported from.

(B) Any facility, establishment, or other place or property from which or to which a hazardous substance or pollutant or contaminant has been or may have been released.

(C) Any facility, establishment, or other place or property where such release is or may be threatened.

(D) Any facility, establishment, or other place or property where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this title.

(4) INSPECTION AND SAMPLES.—

(A) AUTHORITY.—Any officer, employee or representative described in paragraph (1) is authorized to inspect and obtain samples from any facility, establishment, or other place or property referred to in paragraph (3) or from any location of any suspected hazardous substance or pollutant or contaminant. Any such officer, employee, or representative is authorized to inspect and obtain samples of any containers or labeling for suspected hazardous substances or pollutant or contaminants. Each such inspection shall be completed with reasonable promptness.

(B) SAMPLES.—If the officer, employee, or representative obtains any samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

(5) COMPLIANCE ORDERS.—

(A) ISSUANCE.—If consent is not granted regarding any request made by an officer, employee, or representative under paragraph (2), (3), or (4), the Administrator may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

(B) COMPLIANCE.—The Administrator may ask the Attorney General to commence a civil action to compel compliance with a request or order referred to in subparagraph (A). Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, the court shall take the following actions:

(i) In the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection.

(ii) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct

compliance with the requests or orders to provide such information or documents.

The court may assess a civil penalty not to exceed $25,000 for each day of noncompliance against any person who unreasonably fails to comply with the provisions of paragraph (2), (3), or (4) or an order issued pursuant to subparagraph (A) of this paragraph.

(6) OTHER AUTHORITY.—Nothing in this subsection shall preclude the Administrator from securing access or obtaining information in any other lawful manner.

(7) CLEARANCE.—Notwithstanding this subsection, entry to locations and access to information properly classified to protect the national security may be granted only to any officer, employee, or representative of the Administrator who is properly cleared.

[The bill amends section 104(e)(8), in part, by realigning its margin to conform to the margins of subsections (e)(1) through (7), as amended:]

[(2)**]** *(8) CONFIDENTIALITY OF INFORMATION.*—(A) Any records, reports, or information obtained from any person under this section (including records, reports, or information obtained by representatives of the **[**President**]** *Administrator*) shall be available to the public, except that upon a showing satisfactory to the **[**President**]** *Administrator* (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof (other than health or safety effects data), to which the **[**President**]** *Administrator* (or the State, as the case may be) or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18 of the United States Code, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act.

(B) Any person not subject to the provisions of section 1905 of title 18 of the United States Code who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(C) In submitting data under this Act, a person required to provide such data may (i) designate the data which such person believes is entitled to protection under this subsection and (ii) submit such designated data separately from other data submitted under this Act. A designation under this paragraph shall be made in writing and in such manner as the **[**President**]** *Administrator* may prescribe by regulation.

(D) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the **[**President**]** *Administrator* (or any representative of the **[**President**]** *Administrator*) under this

Act shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(9) CIVIL PENALTY.—Any person who fails or refuses to comply with a request or order under this subsection shall be subject to a civil penalty of not more than $25,000 for each day during which such failure or refusal continues.

(f) In awarding contracts to any person engaged in response actions, the [President] *Administrator* or the State, in any case where it is awarding contracts pursuant to a contract entered into under subsection (d) of this section, shall require compliance with Federal health and safety standards established under section 301(f) of this Act by contractors and subcontractors as a condition of such contracts.

(g)(1) All laborers and mechanics employed by contractors or subcontractors in the performance of construction, repair, or alteration work funded in whole or in part under this section shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The [President] *Administrator* shall not approve any such funding without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

(2) The Secretary of Labor shall have, with respect to the labor standards specified in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40 of the United States Code.

(h) Notwithstanding any other provision of law, subject to the provisions of section 111 of this Act, the [President] *Administrator* may authorize the use of such emergency procurement powers as he deems necessary to effect the purpose of this Act. Upon determination that such procedures are necessary, the [President] *Administrator* shall promulgate regulations prescribing the circumstances under which such authority shall be used and the procedures governing the use of such authority.

[(i) There is hereby established within the Public Health Service an agency, to be known as the Agency for Toxic Substances and Disease Registry, which shall report directly to the Surgeon General of the United States. The Administrator of said Agency shall, with the cooperation of the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Directors of the National Institute of Medicine, National Institute of Environmental Health Sciences, National Institute of Occupational Safety and Health, Centers for Disease Control, the Administrator of the Occupational Safety and Health Administration, and the Administrator of the Social Security Administration, effectuate and implement the health related authorities of this Act. In addition, said Administrator shall—

[(1) in cooperation with the States, establish and maintain a national registry of serious diseases and illnesses and a national registry of persons exposed to toxic substances;

[(2) establish and maintain inventory of literature, research, and studies on the health effects of toxic substances;

[(3) in cooperation with the States, and other agencies of the Federal Government, establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of toxic substance contamination;

[(4) in cases of public health emergencies caused or believed to be caused by exposure to toxic substances, provide medical care and testing to exposed individuals, including but not limited to tissue sampling, chromosomal testing, epidemiological studies, or any other assistance appropriate under the circumstances; and

[(5) either independently or as part of other health status survey, conduct periodic survey and screening programs to determine relationships between exposure to toxic substances and illness. In cases of public health emergencies, exposed persons shall be eligible for admission to hospitals and other facilities and services operated or provided by the Public Health Service.]

(i) MANDATORY SCHEDULE.—

(1) LISTING OF FACILITIES ON NPL.—The Administrator shall list not fewer than 1,600 facilities on the National Priorities List by January 1, 1988.

(2) RIFS FOR EXISTING NPL FACILITIES.—The Administrator shall ensure commencement of remedial investigations and feasibility studies for all facilities which are listed, as of the date of the enactment of Superfund Amendments of 1985, on the National Priorities List in accordance with the following schedule:

(A) One-third of such facilities within eight months after such date of enactment.

(B) Two-thirds of such facilities within 16 months after such date of enactment.

(C) All of such facilities within 24 months after such date of enactment.

(3) RIFS FOR NEWLY LISTED FACILITIES.—The Administrator shall ensure commencement of remedial investigations and feasibility studies for each facility which is added to the National Priorities List after the date of the enactment of the Superfund Amendments of 1985. Such remedial investigations and feasibility studies shall be commenced in accordance with a schedule which provides for such commencement—

(A) at 200 facilities during the first 12 months after the 24-month period beginning on such date of enactment,

(B) at 225 facilities during the second 12 months after such period,

(C) at 250 facilities during the third 12 months after such period, and

(D) at 275 facilities, or the remaining number of such facilities, whichever is less, during the fourth 12 months after such period.

(4) COMMENCEMENT OF REMEDIAL ACTION.—The Administrator shall take such steps as may be necessary to ensure that substantial and continuous physical on-site remedial action commences at facilities on the National Priorities List at a rate of not fewer than 150 facilities per year beginning on October 1, 1986.

(5) COMPLETION OF PRELIMINARY ASSESSMENTS.—Not later than January 1, 1987, the Administrator shall complete preliminary assessments of all facilities which are listed, as of the date of the enactment of the Superfund Amendments of 1985, on the Comprehensive Environmental Response, Compensation, and Liability Information System list. Each preliminary assessment shall include a statement as to whether a site inspection is necessary and by whom it should be carried out.

(6) COMPLETION OF SITE INSPECTIONS.—Not later than January 1, 1988, the Administrator shall complete site inspections at all facilities for which the Administrator has stated under paragraph (5) that a site inspection was necessary.

(7) COMPLETION OF REMEDIAL ACTION AT EXISTING NPL FACILITIES.—The Administrator shall take such steps as may be necessary to ensure that remedial action is completed, to the maximum extent practicable, for all facilities listed on the National Priorities List, as of the date of the enactment of the Superfund Amendments of 1985, within five years after such date of enactment. If remedial action is not completed at such facilities within such five-year period, the Administrator shall publish an explanation of why such remedial action could not be completed within such period.

(j) MISCELLANEOUS PROVISIONS.—

(1) SCOPE OF PROGRAM.—The Administrator shall not respond under this Act to any of the following:

(A) A release or threat of a release of a hazardous substance or pollutant or contaminant from residential dwellings or businesses or community structures where such dwellings or structures are not used for the deposition, storage, processing, treatment, transportation, or disposal of hazardous substances.

(B) A release or threat of a release of a hazardous substance or pollutant or contaminant into public or private drinking water supplies due to deterioration of the system through ordinary use.

(C) A release or threat of a release resulting exclusively from the mining of coal for which a timely response action is available and authorized under the Surface Mine Control and Reclamation Act of 1977.

(D) A release or threat of a release of a naturally occurring substance (other than radon) in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found.

Notwithstanding the preceding provisions of this paragraph, the Administrator may respond under this Act to any release or threat of release of a hazardous substance or pollutant or contaminant in any form if the Administrator determines, in his discretion, that the release or threat of release constitutes a major public health or environmental emergency. As used in this paragraph, the term "respond under this Act" includes response action under this section and abatement action under section 106.

(2) HIGH PRIORITY FOR WELLS AND CERTAIN AQUIFERS.—For purposes of taking action under this section or section 106 and

listing facilities on the National Priorities List, the Administrator shall give high priority to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a sole or principal drinking water source designated under section 1424(e) of title XIV of the Public Health Service Act (the Safe Drinking Water Act).

NATIONAL CONTINGENCY PLAN

SEC. 105. *(a) REVISION AND REPUBLICATION.*—Within one hundred and eighty days after the enactment of this Act, the [President] *Administrator* shall, after notice and opportunity for public comments, revise and republish the national contingency plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 311 of the Federal Water Pollution Control Act, to reflect and effectuate the responsibilities and powers created by this Act, in addition to those matters specified in section 311(c)(2). Such revision shall include a section of the plan to be known as the national hazardous substance response plan which shall establish procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants, which shall include at a minimum:

(1) methods for discovering and investigating facilities at which hazardous substances have been disposed of or otherwise come to be located;

(2) methods for evaluating, including analyses of relative cost, and remedying any releases or threats of releases from facilities which pose substantial danger to the public health or the environment;

(3) methods and criteria for determining the appropriate extent of removal, remedy, and other measures authorized by this Act;

(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the plan;

(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies;

(6) a method for and assignment of responsibility for reporting the existence of such facilities which may be located on federally owned or controlled properties and any releases of hazardous substances from such facilities;

(7) means of assuring that remedial action measures are cost-effective over the period of potential exposure to the hazardous substances or contaminated materials;

(8)(A) criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities under this paragraph shall be based upon relative risk or danger to public health or welfare or the environment, in the judgment of the [President] *Administrator*, taking into account to the extent possible the population at risk, the hazard potential of the hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive eco-systems, *the contamination or potential contamination of the ambient air which is associated with the release or threatened release,* State preparedness to assume State costs and responsibilities, and other appropriate factors;

(B) based upon the criteria set forth in subparagraph (A) of this paragraph, the **[**President**]** *Administrator* shall list as part of the plan national priorities among the known releases or threatened releases throughout the United States and shall revise the list no less often than annually. Within one year after the date of enactment of this Act, and annually thereafter, each State shall establish and submit for consideration by the **[**President**]** *Administrator* priorities for remedial action among known releases and potential releases in that State based upon the criteria set forth in subparagraph (A) of this paragraph. In assembling or revising the national list, the **[**President**]** *Administrator* shall consider any priorities established by the States. To the extent practicable, **[**at least four hundred of**]** the highest priority facilities shall be designated individually and shall be referred to as the "top priority among known response targets", and, to the extent practicable, shall include among the one hundred highest priority facilities **[**at least**]** one such facility from each State which shall be the facility designated by the State as presenting the greatest danger to public health or welfare or the environment among the known facilities in such State. Other priority facilities or incidents may be listed singly or grouped for response priority purposes; **[**and**]**

(9) specified roles for private organizations and entities in preparation for response and in responding to releases of hazardous substances, including identification of appropriate qualifications and capacity therefor**[**.**]***; and*

(10) standards and testing procedures by which alternative and innovative treatment technologies can be determined to be appropriate for utilization in remedial actions authorized by this Act.

The plan shall specify procedures, techniques, materials, equipment, and methods to be employed in identifying, removing, or remedying releases of hazardous substances comparable to those required under section 311(c)(2) (F) and (G) and (j)(1) of the Federal Water Pollution Control Act. Following publication of the revised national contingency plan, the response to and actions to minimize damage from hazardous substances releases shall, to the greatest extent possible, be in accordance with the provisions of the plan. The **[**President**]** *Administrator* may, from time to time, revise and republish the national contingency plan.

(b) PETITION FOR ASSESSMENT OF RELEASE.—Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant may petition the Administrator to conduct a preliminary assessment of the hazards to human health and the environment which are associated with such release or threatened release. If the Administrator has not previously con-

ducted a preliminary assessment of such release, the Administrator shall, within 12 months after the receipt of any such petition, complete such assessment or provide an explanation of why the assessment is not appropriate. If the preliminary assessment indicates that the release or threatened release concerned may pose a threat to human health or the environment, the Administrator shall promptly evaluate such release or threatened release in accordance with the hazard ranking system under paragraph (8)(A) of subsection (a) to determine the national priority of such release or threatened release.

(c) RELEASES FROM EARLIER SITES.—Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the Administrator as a "Site Cleaned Up To Date" on the National Priorities List (revised edition, December 1984) the site shall be restored to the National Priorities List, without application of the hazard ranking system.

(d) STATE INVENTORIES.—Each State shall make an inventory of all underground storage tanks in such State containing any hazardous substance and those of such tanks from which there is a known or threatened release of such substance. Each State shall submit its inventories to the Administrator not later than six months after the date of the enactment of this subsection.

ABATEMENT ACTION

SEC. 106. (a) In addition to any other action taken by a State or local government, when the [President] *Administrator* determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The [President] *Administrator* may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.

(b) Any person who, *without sufficient cause,* willfully violates, or fails or refuses to comply with, any order of the [President] *Administrator* under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than [$5,000] *$25,000* for each day in which such violation occurs or such failure to comply continues.

(c) Within one hundred and eighty days after enactment of this Act, the Administrator of the Environmental Protection Agency shall, after consultation with the Attorney General, establish and publish guidelines for using the imminent hazard, enforcement, and emergency response authorities of this section and other existing statutes administered by the Administrator of the Environmental Protection Agency to effectuate the responsibilities and powers created by this Act. Such guidelines shall to the extent practicable be consistent with the national hazardous substance response plan, and shall include, at a minimum, the assignment of responsibility for coordinating response actions with the issuance of administrative orders, enforcement of standards and permits, the gathering of information, and other imminent hazard and emergency powers authorized by (1) sections 311(c)(2), 308, 309, and 504(a) of the Federal Water Pollution Control Act, (2) sections 3007, 3008, 3013, and 7003 of the Solid Waste Disposal Act, (3) sections 1445 and 1431 of the Safe Drinking Water Act, (4) sections 113, 114, and 303 of the Clean Air Act, and (5) section 7 of the Toxic Substances Control Act.

(d) PESTICIDES.—The Administrator shall not take action under this section with respect to any release or threatened release resulting from the normal application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this subsection shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action for such hazardous substance.

(e) REIMBURSEMENT PROCEDURE.—

(1) ABATEMENT ACTION COSTS.—Any person who is issued and complies with any order under subsection (a) may, within 60 days of completion of the required action, petition the Administrator for reimbursement from the Fund for the reasonable costs of such action, plus interest.

(2) COURT ACTION.—If the Administrator refuses to grant all or part of a petition made under this subsection, the petitioner may within 30 days of receipt of such refusal file an action against the Administrator in the appropriate United States district court seeking reimbursement from the Fund.

(3) REQUIREMENTS; EVIDENCE.—Except as provided in paragraph (4), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 107(a) and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

(4) RESPONSE COSTS.—A petitioner who is liable for response costs under section 107(a) may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the Administrator's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this paragraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

(5) INTEREST.—Any interest payable under this subsection shall accrue on the amounts expended from the date of expenditure at the same rate that applies to investments of the Fund under section 223(b) of this Act.

(6) COURT COSTS; COMPENSATORY DAMAGES.—Reimbursement awarded by a court under paragraph (3) or (4) may include appropriate costs, fees, and other expenses in accordance with sub-

sections (a) and (d) of section 2412 of title 28 of the United States Code. A petitioner who has established pursuant to paragraph (3) that the petitioner is not liable for any response costs may also receive compensatory damages.

(7) LIMITATION ON SOURCE OF PAYMENTS.—Any reimbursement awarded under this subsection shall not be paid from the Hazardous Substances Superfund.

LIABILITY

SEC. 107. (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1) the owner and operator of a vessel [(otherwise subject to the jurisdiction of the United States)] or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State *or an Indian tribe* not inconsistent with the national contingency plan *and all costs incurred by the United States Government or a State under section 104(b)*;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan; [and]

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release[.]*; and*

(D) the costs of any health assessment or health effects study carried out under section 116.

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from 90 days after the date on which an action for recovery of such amounts is filed. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is applicable to investments of the Fund under section 223(b) of this Act. For purposes of applying section 223(b), the term "comparable maturity" shall be determined with reference to the date 90 days after the date of filing of the action for recovery under this section.

(b) There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(4) any combination of the foregoing paragraphs.

(c)(1) Except as provided in paragraph (2) of this subsection, the liability under this section of an owner or operator or other responsible person for each release of a hazardous substance or incident involving release of a hazardous substance shall not exceed—

(A) for any vessel which carries any hazardous substance as cargo or residue, $300 per gross ton, or $5,000,000, whichever is greater;

(B) for any other vessel, $300 per gross ton, or $500,000, whichever is greater;

(C) for any motor vehicle, aircraft, pipeline (as defined in the Hazardous Liquid Pipeline Safety Act of 1979), or rolling stock, $50,000,000 or such lesser amount as the **[**President**]** *Administrator* shall establish by regulation, but in no event less than $5,000,000 (or, for releases of hazardous substances as defined in section 101(14)(A) of this title into the navigable waters, $8,000,000). Such regulations shall take into account the size, type, location, storage, and handling capacity and other matters relating to the likelihood of release in each such class and to the economic impact of such limits on each such class; or

(D) for any facility other than those specified in subparagraph (C) of this paragraph, the total of all costs of response plus $50,000,000 for any damages under this title.

(2) Notwithstanding the limitations in paragraph (1) of this subsection, the liability of an owner or operator or other responsible person under this section shall be the full and total costs of response and damages, if (A)(i) the release or threat of release of a hazardous substance was the result of willful misconduct or willful negligence within the privity or knowledge of such person, or (ii) the primary cause of the release was a violation (within the privity or knowledge of such person) of applicable safety, construction, or operating standards or regulations; or (B) such person fails or refuses to provide all reasonable cooperation and assistance request-

ed by a responsible public official in connection with response activities under the national contingency plan with respect to regulated carriers subject to the provisions of title 49 of the United States Code or vessels subject to the provisions of title 33 or 46 of the United States Code, subparagraph (A)(ii) of this paragraph shall be deemed to refer to Federal standards or regulations.

(3) If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the [President] *Administrator* pursuant to section 104 or 106 of this Act, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action. The [President] *Administrator* is authorized to commence a civil action against any such person to recover the punitive damages, which shall be in addition to any costs recovered from such person pursuant to section 112(c) of this Act. Any moneys received by the United States pursuant to this subsection shall be deposited in the Fund.

(d) No person shall be liable under this title for *costs and* damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the national contingency plan or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat thereof. *This subsection shall not alter the liability of any person who is liable or potentially liable under subsection (a) of this section who subsequently undertakes a response action.* This subsection shall not preclude liability for *costs and* damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(e)(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this title, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(f)*(1) NATURAL RESOURCES LIABILITY.*—In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State: *Provided, however,* That no liability to the United States or State shall be imposed under subparagraph (C) of subsection (a), where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license. The [President] *Administrator*, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources. There shall be no recovery under the authority of subparagraph (C) of subsection (a) where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

(2) DESIGNATION OF FEDERAL AND STATE OFFICIALS.—

(A) FEDERAL.—The President shall designate the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act and section 311 of the Federal Water Pollution Control Act. The Administrator shall publish a list of such officials in the National Contingency Plan published under section 105 of this Act. Such officials shall assess damages to natural resources for the purposes of this Act and section 311 of the Federal Water Pollution Control Act for those resources under their trusteeship, and may upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under a State's trusteeship.

(B) STATE.—The Governor of each State shall designate the State officials who may act on behalf of the public as trustees for natural resources under this Act and section 311 of the Federal Water Pollution Control Act and shall notify the Administrator of such designations. Such State officials shall assess damages to natural resources for the purposes of this Act and section 311 of the Federal Water Pollution Control Act for those resources under their trusteeship.

(C) REBUTTABLE PRESUMPTION.—Any determination or assessment of damages to natural resources for the purposes of this Act and section 311 of the Federal Water Pollution Control Act made by a Federal or State trustee in accordance with the regulations promulgated under section 301(c) of this Act shall have the force and effect of a rebuttable presumption on behalf of the trustee in any judicial proceeding under this Act or section 311 of the Federal Water Pollution Control Act.

[(g) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under this section.]

(g) FEDERAL LIEN.—

(1) In general.—All costs and damages for which a person is liable to the United States under subsection (a) of this section shall constitute a lien in favor of the United States upon all real property and rights to such property which—

(A) belong to such person; and

(B) are subject to or affected by a removal or remedial action.

(2) Duration.—The lien imposed by this subsection shall arise at the time costs are first incurred by the United States with respect to a response action under this Act. Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113.

(3) Notice and validity.—The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is located. Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this subsection. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is located. For purposes of this subsection, the terms "purchaser" and "security interest" shall have the definitions provided under section 6323(h) of the Internal Revenue Code of 1954. This paragraph shall not apply with respect to any person who has or reasonably should have actual notice or knowledge that the United States has incurred costs giving rise to a lien under paragraph (1) of this subsection.

(4) Action in rem.—The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.

(h) The owner or operator of a vessel shall be liable in accordance with this section and as provided under section 114 of this Act notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff).

(i) No person (including the United States or any State *or Indian tribe*) may recover under the authority of this section for any response costs or damages resulting from the *normal* application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

(j) Recovery by any person (including the United States or any State *or Indian tribe*) for response costs or damages resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance. In addition, costs of response incurred by the Federal Government in connection with a discharge specified in section 101(10) (B) or (C) shall be recoverable in an action brought under section 309(b) of the Clean Water Act.

[(k)(1) The liability established by this section or any other law for the owner or operator of a hazardous waste disposal facility which has received a permit under subtitle C of the Solid Waste Disposal Act, shall be transferred to and assumed by the Post-closure Liability Fund established by section 232 of this Act when—

[(A) such facility and the owner and operator thereof has complied with the requirements of subtitle C of the Solid Waste Disposal Act and regulations issued thereunder, which may affect the performance of such facility after closure; and

[(B) such facility has been closed in accordance with such regulations and the conditions of such permit, and such facility and the surrounding area have been monitored as required by such regulations and permit conditions for a period not to exceed five years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substance or other risk to public health or welfare will occur.

[(2) Such transfer of liability shall be effective ninety days after the owner or operator of such facility notifies the Administrator of the Environmental Protection Agency (and the State where it has an authorized program under section 3006(b) of the Solid Waste Disposal Act) that the conditions imposed by this subsection have been satisfied. If within such ninety-day period the Administrator of the Environmental Protection Agency or such State determines that any such facility has not complied with all the conditions imposed by this subsection or that insufficient information has been provided to demonstrate such compliance, the Administrator or such State shall so notify the owner and operator of such facility and the administrator of the Fund established by section 232 of this Act, and the owner and operator of such facility shall continue to be liable with respect to such facility under this section and other law until such time as the Administrator and such State determines that such facility has complied with all conditions imposed by this subsection. A determination by the Administrator or such State that a facility has not complied with all conditions imposed by this subsection or that insufficient information has been supplied to demonstrate compliance, shall be a final administrative action for purposes of judicial review. A request for additional information shall state in specific terms the data required.

[(3) In addition to the assumption of liability of owners and operators under paragraph (1) of this subsection, the Post-closure Liability Fund established by section 232 of this Act may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons after the period of monitoring required by regulations under subtitle C of the Solid Waste Disposal Act for hazardous waste disposal facilities meeting the conditions of paragraph (1) of this subsection.

[(4)(A) Not later than one year after the date of enactment of this Act, the Secretary of the Treasury shall conduct a study and shall submit a report thereon to the Congress on the feasibility of establishing or qualifying an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. Such study shall include a specification of adequate and realistic minimum standards to assure that any such privately placed insurance will carry out the purposes of this subsection in a reliable, enforceable, and practical manner. Such a study shall include an examination of the public and private incentives, programs, and actions necessary to make privately placed insurance a practical and effective option to the financing system for the Post-closure Liability Fund provided in title II of this Act.

[(B) Not later than eighteen months after the date of enactment of this Act and after a public hearing, the President shall by rule determine whether or not it is feasible to establish or qualify an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. If the President determines the establishment or qualification of such a system would be infeasible, he shall promptly publish an explanation of the reasons for such a determination. If the President determines the establishment or qualification of such a system would be feasible, he shall promptly publish notice of such determination. Not later than six months after an affirmative determination under the preceding sentence and after a public hearing, the President shall by rule promulgate adequate and realistic minimum standards which must be met by any such privately placed insurance, taking into account the purposes of this Act and this subsection. Such rules shall also specify reasonably expeditious procedures by which privately placed insurance plans can qualify as meeting such minimum standards.

[(C) In the event any privately placed insurance plan qualifies under subparagraph (B), any person enrolled in, and complying with the terms of, such plan shall be excluded from the provisions of paragraphs (1), (2), and (3) of this subsection and exempt from the requirements to pay any tax or fee to the Post-closure Liability Fund under title II of this Act.

[(D) The President may issue such rules and take such other actions as are necessary to effectuate the purposes of this paragraph.]

FINANCIAL RESPONSIBILITY

SEC. 108. (a)(1) The owner or operator of each vessel (except a non-self-propelled barge that does not carry hazardous substances as cargo) over three hundred gross tons that uses any port or place in the United States or the navigable waters or any offshore facility, shall establish and maintain, in accordance with regulations promulgated by the [President] *Administrator*, evidence of financial responsibility of $300 per gross ton (or for a vessel carrying hazardous substances as cargo, or $5,000,000, whichever is greater). Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have certification furnished by the [President] *Administrator* that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary of Transportation, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the [President] *Administrator* that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(b)(1) Beginning not earlier than five years after the date of enactment of this Act *and not later than one year after the date of the enactment of the Superfund Amendments of 1985*, the [President] *Administrator* shall promulgate requirements (for facilities in addition to those under subtitle C of the Solid Waste Disposal Act and other Federal law) that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. Not later than three years after the date of enactment of the Act, the [President] *Administrator* shall identify those classes for which requirements will be first developed and publish notice of such identification in the Federal Register. Priority in the development of such requirements shall be accorded to those classes of facilities, owners, and operators which the [President] *Administrator* determines present the highest level of risk of injury.

(2) The level of financial responsibility shall be initially established, and, when necessary, adjusted to protect against the level of risk which the [President] *Administrator* in his discretion believes is appropriate based on the payment experience of the Fund, commercial insurers, courts settlements and judgments, and volun-

tary claims satisfaction. To the maximum extent practicable, the [President] *Administrator* shall cooperate with and seek the advice of the commercial insurance industry in developing financial responsibility requirements. *Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.*

(3) Regulations promulgated under this subsection shall incrementally impose financial responsibility requirements [over a period of not less than three and no more than six years] *as quickly as can reasonably be achieved but in no event more than four years* after the date of promulgation. Where possible, the level of financial responsibility which the [President] *Administrator* believes appropriate as a final requirement shall be achieved through incremental, annual increases in the requirements.

(4) Where a facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(5) The requirements for evidence of financial responsibility for motor carriers covered by this Act shall be determined under section 30 of the Motor Carrier Act of 1980, Public Law 96-296.

[(c) Any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but such guarantor may not invoke any other defense that such guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

[(d) Any guarantor acting in good faith against which claims under this Act are asserted as a guarantor shall be liable under section 107 or section 112(c) of this title only up to the monetary limits of the policy of insurance or indemnity contract such guarantor has undertaken or of the guaranty of other evidence of financial responsibility furnished under section 108 of this Act, and only to the extent that liability is not excluded by restrictive endorsement: *Provided,* That this subsection shall not alter the liability of any person under section 107 of this Act.]

(c) DIRECT ACTION IN CASE OF BANKRUPTCY, ETC.—In any case where a person liable under section 107 is in bankruptcy, reorganization, or arrangement pursuant to title 11, United States Code, or

where with reasonable diligence jurisdiction cannot be obtained in Federal court over a person liable under section 107 likely to be solvent at the time of judgment, any claim authorized by section 107 or 111 may be asserted directly against the guarantor providing evidence of financial responsibility for that person. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the person liable under section 107 if any action had been brought against such person by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by such person.

(d) LIMITATION OF GUARANTOR LIABILITY.—

(1) TOTAL LIABILITY.—The total liability under this Act of any guarantor for a facility shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the person liable under section 107.

(2) OTHER LIABILITY.—Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual, or common law liability of a guarantor, including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed, interpreted, or applied to diminish the liability of any person under section 107 of this Act or other applicable law.

(e) CIVIL PENALTY.—Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of this section, the regulations issued under this section, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $25,000 for each day of violation.

[PENALTY

[SEC. 109. Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 108, the regulations issued thereunder, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each day of violation.]

SEC. 109. ASSESSMENT AND COLLECTION OF CIVIL PENALTIES.

(a) ASSESSMENT.—A civil penalty under this Act shall be assessed by the Administrator by an order made on the record after opportunity (provided in accordance with this subsection) for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Administrator shall give written notice to the person to be assessed a civil penalty under such order of the Administrator's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.

(b) AMOUNT OF PENALTY.—In determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

(c) DEDUCTION FROM SUMS OWING TO UNITED STATES.—The amount of a civil penalty, when finally determined, may be deducted from any sums owing by the United States to the person charged.

(d) JUDICIAL REVIEW.—Any person who requested in accordance with subsection (a) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(e) FAILURE TO PAY.—If any person fails to pay an assessment of a civil penalty—

(1) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with subsection (d), or

(2) after a court in an action brought under subsection (d) has entered a final judgment in favor of the Administrator,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in subsection (d) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

EMPLOYEE PROTECTION

SEC. 110. (a) No person shall fire or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to a State or to the Federal Government, filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

(b) Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person, who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under this Act.

(c) Whenever an order is issued under this section to abate such violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) determined by the Secretary of Labor to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) This section shall have no application to any employee who acting without discretion from his employer (or his agent) deliberately violates any requirement of this Act.

(e) The **[**President**]** *Administrator* shall conduct continuing evaluations of potential loss of shifts of employment which may result from the administration or enforcement of the provisions of this Act, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the **[**President**]** *Administrator* to conduct a full investigation of the matter and, at the request of any party, shall hold public hearings, require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and any alleged discharge, layoff, or other discrimination, and the detailed reasons or justification therefore. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the **[**President**]** *Administrator* shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the **[**President**]** *Administrator* or any State to modify or withdraw any action, standard, limitation, or any other requirement of this Act.

USES OF FUND

SEC. 111. (a) *IN GENERAL.—For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substances Superfund established under section 221 not more than $1,820,000,000 for each of the five fiscal years beginning after September 30, 1985, and ending before October 1, 1990 (plus for each* *such fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection as has not been appropriated before the beginning of the fiscal year involved).* The [President] *Administrator* shall use the money in the Fund for the following purposes:

(1) payment of governmental response costs incurred pursuant to section 104 of this title, including costs incurred pursuant to the Intervention on the High Seas Act;

(2) payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 311(c) of the Clean Water Act and amended by section 105 of this title: *Provided, however,* That such costs must be approved under said plan and certified by the responsible Federal official;

(3) payment of any claim authorized by subsection (b) of this section and finally decided pursuant to section 112 of this title, including those costs set out in subsection 112(c)(3) of this title; [and]

(4) payment of costs specified under subsection (c) of this section[.]*; and*

(5) the cost of grants under sections 123(e) (relating to grants for technical assistance).

The [President] *Administrator* shall not pay for any administrative costs or expenses out of the Fund unless such costs and expenses are reasonably necessary for and incidental to the implementation of this title.

(b) Claims asserted and compensable but unsatisfied under provisions of section 311 of the Clean Water Act, which are modified by section 304 of this Act may be asserted against the Fund under this title; and other claims resulting from a release or threat of release of a hazardous substance from a vessel or a facility may be asserted against the Fund under this title for injury to, or destruction or loss of, natural resources, including cost for damage assessment: *Provided, however,* That any such claim may be asserted only by the [President] *Administrator,* as trustee, for natural resources over which the United States has sovereign rights, or natural resources within the territory or the fishery conservation zone of the United States to the extent they are managed or protected by the United States, or by any State for natural resources within the boundary of that State belonging to, managed by, controlled by, or appertaining to the State.

(c) Uses of the Fund under subsection (a) of this section include—

(1) the costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance;

(2) the costs of Federal or State efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance;

(3) subject to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against releases of hazardous substances;

(4) the costs of epidemiologic [studies,] *and laboratory studies, health assessments, preparation of toxicologic profiles,* development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances in connection with a release or a suspected release are suffering from long-latency diseases;

(5) subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Clean Water Act, and needed to supplement equipment and services available through contractors or other non-Federal entities, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under the national contingency plan; [and]

(6) subject to such amounts as are provided in appropriation Acts, the costs of a program to protect the health and safety of employees involved in response to hazardous substance releases. Such program shall be developed jointly by the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health and shall include, but not be limited to, measures for identifying and assessing hazards to which persons engaged in removal, remedy, or other response to hazardous substances may be exposed, methods to protect workers from such hazards, and necessary regulatory and enforcement measures to assure adequate protection of such employees[.]*;*

(7) costs incurred by the Administrator in evaluating facilities pursuant to petitions under section 105(b);

(8) the costs of appropriate Federal and State enforcement and oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements, where the responsible party or parties have been determined but where inadequate enforcement and oversight assistance has been provided by such responsible party or parties;

(9) the costs of carrying out the research and training program under section 116(s), to the extent that such costs do not exceed the following amounts:

(A) for the fiscal year 1986, $3,000,000;
(B) for the fiscal year 1987, $10,000,000;
(C) for the fiscal year 1988, $25,000,000;
(D) for the fiscal year 1989, $35,000,000; and
(E) for the fiscal year 1990, $40,000,000;

(10) the costs of carrying out the research, development, and demonstration program for alternative and innovative technologies under section 117, to the extent that such costs do not exceed $25,000,000 for each of fiscal years 1986, 1987, 1988, 1989, and 1990;

(11) the costs of grants under section 118 (relating to grants for university hazardous waste research centers), to the extent that such costs do not exceed $10,000,000 for each of fiscal years 1986, 1987, 1988, 1989, and 1990;

(12) reimbursements to local governments under section 125, except that, during the five-fiscal year period beginning October 1, 1985, not more than 0.2 percent of the total amount appropriated from the Fund may be used for such reimbursements; and

(13) the costs of worker training and education grants under section 128(e), to the extent that such costs do not exceed $10,000,000 for each of fiscal years 1986, 1987, 1988, 1989, and 1990.

As used in paragraph (4), the term "health assessment" shall have the meaning provided by section 116(f)(7).

(d)[(1)] No money in the Fund may be used under subsection (c)(1) and (2) of this section, nor for the payment of any claim under subsection (b) of this section, where the injury, destruction, or loss of natural resources and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

[(2) No money in the Fund may be used for the payment of any claim under subsection (b) of this section where such expenses are associated with injury or loss resulting from long-term exposure to ambient concentrations of air pollutants from multiple or diffuse sources.]

(e)(1) Claims against or presented to the Fund *pursuant to subsection (a)(2)* shall not be valid or paid in excess of the total money in the Fund at any one time. Such claims become valid only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the [President] *Administrator* shall pay such claims, to the extent authorized under this section, in full in the order in which they were finally determined.

(2) In any fiscal year, 85 percent of the money credited to the Fund under title II of this Act shall be available only *(A)* for the purposes specified in paragraphs (1), (2), and (4) of subsection (a) of this section, *and (B) for the repayment of advances made under section 223(c).*

(3) No money in the Fund shall be available for remedial action, other than actions specified in subsection (c) of this section, with respect to federally owned facilities.

(4) Paragraphs (1) and (4) of subsection (a) of this section shall in the aggregate be subject to such amounts as are provided in appropriation Acts.

(f) The [President] *Administrator* is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with this section or portions thereof. The [President] *Administrator* is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d) of this title.

(g) The [President] *Administrator* shall provide for the promulgation of rules and regulations with respect to the notice to be provided to potential injured parties by an owner and operator of any vessel, or facility from which a hazardous substance has been released. Such rules and regulations shall consider the scope and form of the notice which would be appropriate to carry out the purposes of this title. Upon promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide notice in accordance with such rules and regulations. With respect to releases from public vessels, the [President] *Administrator* shall provide such notification as is appropriate to potential injured parties. Until the promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area.

(h)(1) In accordance with regulations promulgated under section 301(c) of this Act, damages for injury to, destruction of, or loss of natural resources resulting from a release of a hazardous substance, for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act, shall be assessed by Federal officials designated by the [President] *Administrator* under the national contingency plan published under section 105 of the Act, and such officials shall act for the [President] *Administrator* as trustee under this section and section 311(f)(5) of the Federal Water Pollution Control Act.

(2) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act shall have the force and effect of a rebuttable presumption on behalf of any claimant (including a trustee under section 107 of this Act or a Federal agency) in any judicial or adjudicatory administrative proceeding under this Act or section 311 of the Federal Water Pollution Control Act.

(i) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, after adequate public notice and opportunity for hearing and consideration of all public comment.

[(j) The President shall use the money in the Post-closure Liability Fund for any of the purposes specified in subsection (a) of this section with respect to a hazardous waste disposal facility for which liability has transferred to such fund under section 107(k) of this Act, and, in addition, for payment of any claim or appropriate request for costs of response, damages, or other compensation for injury or loss under section 107 of this Act or any other State or Federal law, resulting from a release of a hazardous substance from such a facility.

[(k) The Inspector General of each department or agency to which responsibility to obligate money in the Fund is delegated shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. Each such Inspector General shall submit to the Congress an interim report one year after the establishment of the Fund and a final report two years after the establishment of the Fund. Each such Inspector General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Inspector General in carrying out this subsection.]

(k) Inspector General.—In each fiscal year, the Inspector General of each department, agency, or instrumentality of the United States which is carrying out any authority of this Act shall undertake the following:

(1) Audit.—The conduct of an annual audit of all payments, obligations, reimbursements, or other uses of the Fund in the prior fiscal year, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The audit shall include an examination of a random sample of agreements with States carrying out response actions under this title and an examination of remedial investigations and feasibility studies prepared for remedial actions.

(2) Status report.—The preparation of a report on the status of all remedial and enforcement actions undertaken during the prior fiscal year. The status report shall include a comparison to remedial and enforcement actions undertaken in prior fiscal years.

(3) Estimate.—The preparation of an estimate of the amount of resources, including the number of work years or personnel, which would be necessary for the department, agency, or instrumentality to complete the implementation of all duties vested in the department, agency, or instrumentality under this Act.

The Inspector General shall submit to the Congress an annual report regarding the audit and status report required under this subsection. The report shall contain such recommendations as the Inspector General deems appropriate. Each Federal agency shall cooperate with the Inspector General in carrying out this subsection.

(l) To the extent that the provisions of this Act permit, a foreign claimant may assert a claim to the same extent that a United States claimant may assert a claim if—

(1) the release of a hazardous substance occurred (A) in the navigable waters or (B) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

(2) the claimant is not otherwise compensated for his loss;

(3) the hazardous substance was released from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

(4) recovery is authorized by a treaty or an executive agreement between the United States and foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such

country provides a comparable remedy for United States claimants.

(m) Authorization of Appropriations From General Fund.—

(1) In general.—The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substances Superfund:

(A) For fiscal year 1986, $250,000,000.
(B) For fiscal year 1987, $250,000,000.
(C) For fiscal year 1988, $250,000,000.
(D) For fiscal year 1989, $250,000,000.
(E) For fiscal year 1990, $250,000,000.

In addition there is authorized to be appropriated to the Hazardous Substances Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Revenue Act of 1980) as has not been appropriated before the beginning of such fiscal year.

(2) Computation.—The amount authorized to be appropriated under paragraph (1) of this subsection for a fiscal year shall be available only to the extent that such amount exceeds the amount determined by the Secretary under section 221(b)(1)(B) for the prior fiscal year.

(n) Agency for Toxic Substances and Disease Registry.—For fiscal year 1986 and each fiscal year thereafter, not less than $30,000,000 shall be directly available from the Fund to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) and section 116. Any funds so made available which are not obligated by the end of the fiscal year in which made available shall be returned to the Fund.

CLAIMS PROCEDURE

Sec. 112. (a) All claims which may be asserted against the Fund pursuant to section 111 of this title shall be presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 107 of this title. In any case where the claim has not been satisfied within sixty days of presentation in accordance with this subsection, the claimant may elect to commence an action in court against such owner, operator, guarantor, or other person or to present the claim to the Fund for payment.

(b)(1) The [President] *Administrator* shall prescribe appropriate forms and procedures for claims filed hereunder, which shall include a provision requiring the claimant to make a sworn verification of the claim to the best of his knowledge. Any person who knowingly gives or causes to be given any false information as a part of any such claim shall, upon conviction, be fined [up to $5,000 or imprisoned for not more than one year, or both] *in accordance with section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisoned for not more than three years, or both.*

(2)(A) Upon receipt of any claim, the [President] *Administrator* shall as soon as practicable inform any known affected parties of the claim and shall attempt to promote and arrange a settlement between the claimant and any person who may be liable. If the claimant and alleged liable party or parties can agree upon a settlement, it shall be final and binding upon the parties thereto, who will be deemed to have waived all recourse against the Fund.

(B) Where a liable party is unknown or cannot be determined, the claimant and the [President] *Administrator* shall attempt to arrange settlement of any claim against the Fund. The [President] *Administrator* is authorized to award and make payment of such a settlement, subject to such proof and procedures as he may promulgate by regulation.

(C) Except as provided in subparagraph (D) of this paragraph, the [President] *Administrator* shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in implementing this subsection and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the [President] *Administrator* that advertising is not reasonably practicable. When the services of a State agency are used hereunder, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the [President] *Administrator.*

(D) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the [President] *Administrator* may use Federal personnel to implement this subsection.

(3) If no settlement is reached within forty-five days of filing of a claim through negotiation pursuant to this section, the [President] *Administrator* may, if he is satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim. If the claimant is dissatisfied with the award, he may appeal it in the manner provided for in subparagraph (G) of paragraph (4) of this subsection. If the [President] *Administrator* declines to make an award, he shall submit the claim for decision to a member of the Board of Arbitrators established pursuant to paragraph (4).

(4)(A) Within ninety days of the enactment of this Act, the [President] *Administrator* shall establish a Board of Arbitrators to implement this subsection. The Board shall consist of as many members as the [President] *Administrator* may determine will be necessary to implement this subsection expeditiously, and he may increase or decrease the size of the Board at any time in his discretion in order to enable it to respond to the demands of such implementation. Each member of the Board shall be selected through utilization of the procedures of the American Arbitration Association: *Provided, however,* That no regular employee of the [President] *Administrator* or any of the Federal departments, administrations, or agencies to whom he delegated responsibilities under this Act shall act as a member of the Board.

(B) Hearings conducted hereunder shall be public and shall be held in such place as may be agreed upon by the parties thereto, or, in the absence of such agreement, in such place as the [President] *Administrator* determines, in his discretion, will be most convenient for the parties thereto.

(C) Hearings before a member of the Board shall be informal, and the rules of evidence prevailing in judicial proceedings need not be required. Each member of the Board shall have the power to administer oaths and to subpena the attendance and testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues presented to him for decision. Testimony may be taken by interrogatory or deposition. Each person appearing before a member of the Board shall have the right to counsel. Subpenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the [President] *Administrator*. If a person fails or refuses to obey a subpena, the [President] *Administrator* may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(D) In any proceeding before a member of the Board, the claimant shall bear the burden of proving his claim. Should a member of the Board determine that further investigations, monitoring, surveys, testing, or other information gathering would be useful and necessary in deciding the claim, he may request the [President] *Administrator* in writing to undertake such activities pursuant to section 104(b) of this title. The [President] *Administrator* shall dispose of such a request in his sole discretion, taking into account various competing demands and the availability of the technical and financial capacity to conduct such studies, monitoring, and investigations. Should the [President] *Administrator* decide to undertake the requested actions, all time requirements for the processing and deciding of claims hereunder shall be suspended until the [President] *Administrator* reports the results thereof to the member of the Board.

(E) All costs and expenses approved by the [President] *Administrator* attributable to the employment of any member of the Board shall be payable from the Fund, including fees and mileage expenses for witnesses summoned by such members on the same basis and to the same extent as if such witnesses were summoned before a district court of the United States.

(F) All decisions rendered by members of the Board shall be in writing, with notification to all appropriate parties, and shall be rendered within ninety days of submission of a claim to a member, unless all the parties to the claim agree in writing to an extension or unless the [President] *Administrator* extends the time limit pursuant to subparagraph (I) of this subsection.

(G) All decisions rendered by members of the Board shall be final, and any party to the proceeding may appeal such a decision within thirty days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the arbitral hearing took place. In any such appeal, the award or decision of the member of the Board shall be considered binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of the member's discretion: *Provided, however,* That no such award or decision shall be admissible as evidence of any issue of fact or law in any proceeding brought under any other provision of this Act or under any other provision of law. Nor shall any prearbitral settlement reached pursuant to subsection (b)(2)(A) of this section be admissible as evidence in any such proceeding.

(H) Within twenty days of the expiration of the appeal period for any arbitral award or decision, or within twenty days of the final judicial determination of any appeal taken pursuant to this subsection, the [President] *Administrator* shall pay any such award from the Fund. The [President] *Administrator* shall determine the method, terms, and time of payment.

(I) If at any time the [President] *Administrator* determines that, because of a large number of claims arising from any incident or set of incidents, it is in the best interests of the parties concerned, he may extend the time for prearbitral negotiation or for rendering an arbitral decision pursuant to this subsection by a period not to exceed sixty days. He may also group such claims for submission to a member of the Board of Arbitrators.

(c)(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation the rights of the claimant to recover those costs of removal or damages for which it has compensated the claimant from the person responsible or liable for such release.

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for damages or costs resulting from a release of a hazardous substance shall be subrogated to all rights, claims, and causes of action for such damages and costs of removal that the claimant has under this Act or any other law.

(3) Upon request of the [President] *Administrator,* the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this title, and, without regard to any limitation of liability, all interest, administrative and adjudicative costs, and attorney's fees incurred by the Fund by reason of the claim. Such an action may be commenced against any owner, operator, or guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs for which compensation was paid.

[(d) No claim may be presented, nor may an action be commenced for damages under this title, unless that claim is presented or action commenced within three years from the date of the discovery of the loss or the date of enactment of this Act, whichever is later: *Provided, however,* That the time limitations contained herein shall not begin to run against a minor until he reaches eighteen years of age or a legal representative is duly appointed for him, nor against an incompetent person until his incompetency ends or a legal representative is duly appointed for him.]

(d) STATUTE OF LIMITATIONS.—

(1) CLAIMS FOR RECOVERY OF COSTS.—No claim may be presented under this section for recovery of the costs referred to in

section 107(a) after the date six years after the date of completion of all response action.

(2) MINORS AND INCOMPETENTS.—The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when he reaches eighteen years of age or the date on which a legal representative is duly appointed for him, or

(B) against an incompetent person until the earlier of the date on which his incompetency ends or the date on which a legal representative is duly appointed for him.

(e) Regardless of any State statutory or common law to the contrary, no person who asserts a claim against the Fund pursuant to this title shall be deemed or held to have waived any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances, nor to have split a cause of action. Further, no person asserting a claim against the Fund pursuant to this title shall as a result of any determination of a question of fact or law made in connection with that claim be deemed or held to be collaterally estopped from raising such question in connection with any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances.

LITIGATION, JURISDICTION AND VENUE

SEC. 113. (a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

(b) Except as provided in [subsection (a)] *subsection (a) and (i)* of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the release or damages occurred, or in which the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

(c) The provisions of subsections (a) and (b) of this section shall not apply to any controversy or other matter resulting from the assessment of collection of any tax, as provided by title II of this Act, or to the review of any regulation promulgated under the Internal Revenue Code of 1954.

(d) No provision of this Act shall be deemed or held to moot any litigation concerning any release of any hazardous substance, or any damages associated therewith, commenced prior to enactment of this Act.

(e) NATIONWIDE SERVICE.—In any action by the United States under section 106 or 107, process may be served in any district where

the defendant is found, resides, transacts business, or has appointed an agent for the service of process.

(f) Contribution.—

(1) Contribution.—Except as provided in paragraph (2), any defendant alleged or held to be liable in an action under section 106 or section 107 may bring an action for contribution or indemnity against any other person liable or potentially liable. In any such action in a court of the United States the Federal Rules of Civil Procedure shall apply. Except as provided in paragraph (2) of this subsection, this subsection shall not impair any right of contribution or indemnity under existing law.

(2) Settlement.—When a party has resolved its liability to the United States or a State in a judicially approved good-faith settlement under section 122, such person shall not be liable for claims for contribution or indemnity regarding matters addressed in the settlement. Such settlement does not discharge any of the other parties unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the settlement.

(3) Persons not parties to settlement.—Nothing in this subsection shall affect or modify in any way the rights of—

(A) the United States,

(B) a State, or

(C) any person that has resolved its liability to the United States or a State in a good-faith settlement,

to seek contribution or indemnification against any persons who are not party to a settlement referred to in paragraph (2).

(4) Contribution action.—Any contribution action brought under this subsection shall be governed by Federal law. In any such action, the rights of a person referred to in paragraph (3)(C) shall be subordinated to the rights of the United States and any State; except that the Administrator may waive such subordination if the Administrator determines that such waiver will expedite a settlement under this section and the cleanup covered by such settlement.

(g) Statute of Limitations.—

(1) Actions for natural resource damages.—Except as provided in paragraph (3), no action may be commenced for damages (as defined in section 101(6)) under this Act, unless that action is commenced within three years after the later of the following:

(A) The date of the discovery of the loss.

(B) The date on which regulations are promulgated under section 301(c).

(2) Actions for recovery of costs.—No action may be commenced under section 107 for recovery of the costs referred to in section 107(a) after the date six years after the date of completion of the response action. Except as provided in the preceding sentence, an action may be commenced under section 107 for recovery of costs at any time after such costs have been incurred.

(3) Contribution.—No action for contribution for any response costs or damages may be commenced more than three years after—

(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

(B) the date of entry of a judicially approved settlement with respect to such costs or damages.

(4) SUBROGATION.—No action based on rights subrogated pursuant to this section by reason of payment of a claim may be commenced under this title more than three years after the date of payment of such claim.

(5) MINORS AND INCOMPETENTS.—The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when he reaches eighteen years of age or the date on which a legal representative is duly appointed for him, or

(B) against an incompetent person until the earlier of the date on which his incompetency ends or the date on which a legal representative is duly appointed for him.

(h) TIMING OF REVIEW.—No court shall have jurisdiction to review any challenges to removal or remedial action selected under section 104 or any order issued under section 104(b) or to review any order issued under section 106(a) in any action, other than one of the following:

(1) An action under section 107 to recover response costs or damages or for contribution or indemnification.

(2) An action to enforce an order issued under section 104(b) or 106(a) or to recover a penalty for violation of such order.

(3) An action for reimbursement under section 106(b)(2).

(4) An action under section 310 of this Act alleging that the removal or remedial action taken under section 104 or secured under section 106 was in violation of any requirement of this Act. Such an action may not be brought with regard to an ongoing removal where a remedial action is to be undertaken at the site.

(5) An action under section 106 for injunctive relief or a motion to review the Administrator's selection of the remedy under a consent decree which has been entered under section 106 and in which a potentially responsible person has made a commitment to assist or finance a remedial investigation and feasibility study and to implement the remedial action decision of the Administrator following review.

(i) ADMINISTRATIVE RECORD.—

(1) LIMITATION.—In any judicial action under section 106 or 107, judicial review of any issues concerning the adequacy of any response action taken or ordered by the Administrator shall be limited to the administrative record. The objections which may be raised in any such judicial action under section 106 or 107 must be based upon the comments received and the evidence contained in the record.

(2) STANDARD.—In considering such objections, the court shall uphold the Administrator's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law.

(3) REMEDY.—If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in

accordance with law, the court shall award only the response costs or damages or other relief being sought to the extent that such relief is not inconsistent with the national contingency plan.

(4) PROCEDURAL ERRORS.—In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

(j) PARTICIPATION PROCEDURES.—The Administrator shall issue regulations in accordance with chapter 5 of title 5 of the United States Code establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which judicial review of response actions will be based. For remedial actions, such regulations shall include procedures for providing each of the following, before adoption of any plan for remedial action to be undertaken by the United States or a State or any other person under section 104 or section 106 of this Act:

(1) Notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.

(2) A reasonable opportunity to comment and provide information regarding the plan.

(3) An opportunity for a public meeting in the affected area.

(4) A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under such procedures.

(5) Agency support for the basis and purpose of the selected action.

The administrative record shall include the items developed and received pursuant to the procedures established under this subsection.

RELATIONSHIP TO OTHER LAW

SEC. 114. (a) Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the release of hazardous substances within such State.

(b) Any person who receives compensation for removal costs or damages or claims pursuant to this Act shall be precluded from recovering compensation for the same removal costs or damages or claims pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages or claims pursuant to any other Federal or State law shall be precluded from receiving compensation for the same removal costs or damages or claims as provided in this Act.

[(c) Except as provided in this Act, no person may be required to contribute to any fund, the purpose of which is to pay compensation for claims for any costs of response or damages or claims which may be compensated under this title. Nothing in this section shall preclude any State from using general revenues for such a fund, or from imposing a tax or fee upon any person or upon any substance in order to finance the purchase or prepositioning of hazardous substance response equipment or other preparations for the response to a release of hazardous substances which affects such State.]

(c) State Funds.—Notwithstanding any provision of this or any other law, a State may require any person to contribute to any fund the purpose of which is to pay for any costs of response or damages.

(d) Except as provided in this title, no owner or operator of a vessel or facility who establishes and maintains evidence of financial responsibility in accordance with this title shall be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial responsibility in connection with liability for the release of a hazardous substance from such vessel or facility. Evidence of compliance with the financial responsibility requirements of this title shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the release of a hazardous substance from such vessel or facility.

[AUTHORITY TO DELEGATE, ISSUE REGULATIONS

[Sec. 115. The President is authorized to delegate and assign any duties or powers imposed upon or assigned to him and to promulgate any regulations necessary to carry out the provisions of this title.]

SEC. 115. AUTHORITY TO DELEGATE FUNCTIONS AND ISSUE REGULATIONS.

(a) Delegation of Functions.—

(1) The president.—The President is authorized to delegate and assign any duties or powers imposed upon or assigned to him necessary to carry out the provisions of this title.

(2) The administrator.—The Administrator is authorized to delegate and assign to officers and employees of the Environmental Protection Agency any duties or powers imposed upon or assigned to him necessary to carry out the provisions of this title.

(b) Regulations.—The Administrator is authorized to issue any regulations necessary to carry out the provisions of this title.

SEC. 116. AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.

(a) Establishment.—There is hereby established within the Public Health Service an agency, headed by an administrator, to be known as the Agency for Toxic Substances and Disease Registry (hereinafter in this Act referred to as "ATSDR"). The Administrator of ATSDR shall report to the Secretary of the Department of Health and Human Services.

(b) Duties.—The Administrator of ATSDR shall effectuate and implement the health-related authorities of this Act with the cooperation of—

(1) the Administrator,

(2) the Commissioner of the Food and Drug Administration,

(3) the Directors of the National Institutes of Health, the National Institute of Environmental Health Sciences, the National Institute of Occupational Safety and Health, and the Center for Disease Control,

(4) the Administrator of the Occupational Safety and Health Administration,

(5) the Administrator of the Social Security Administration, and

(6) appropriate State and local health officials.

(c) LIST OF RESTRICTED AREAS.—*In cooperation with the States and other agencies of the Federal Government, the Administrator of ATSDR shall establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of contamination by hazardous substances.*

(d) LIST OF SUBSTANCES.—

(1) INITIAL 100.—*Within six months after the date of the enactment of this section, the Administrator of ATSDR, in consultation with the Administrator, shall prepare a list, in order of priority, of at least 100 hazardous substances which are most commonly found at facilities on the National Priorities List and which are posing the most significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances at facilities on the National Priorities List or at facilities to which a response to a release or a threatened release under section 104 is under consideration.*

(2) REVISION.—*Within 24 months after the date of the enactment of this section, the Administrator of ATSDR, in consultation with the Administrator, shall revise the list prepared under paragraph (1). Such revision shall include, in order of priority, the addition of 100 or more such hazardous substances. In each of the three consecutive 12-month periods that follow, the Administrator of ATSDR shall revise, in the same manner as provided in the two preceding sentences, such list to include not fewer than 25 additional hazardous substances. The Administrator of ATSDR, in consultation with the Administrator, shall not less often than once every year thereafter revise such list to include additional hazardous substances in accordance with the criteria in paragraph (1).*

(e) INFORMATION ON HEALTH EFFECTS.—

(1) LITERATURE, STUDIES, ETC.—*The Administrator of ATSDR shall establish and maintain an inventory of research literature, reports, and studies on the health effects of each hazardous substance listed pursuant to subsection (d).*

(2) TOXICOLOGICAL PROFILES.—*Based on all available information, including information maintained under paragraph (1) and data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator of ATSDR shall prepare toxicological profiles of each of the substances listed pursuant to subsection (d). The toxicological profiles shall be prepared in accordance with guidelines developed by the Administrator of ATSDR, in consultation with the Administrator. Such profiles shall include, but not be limited to—*

(A) an examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects;

(B) a determination of whether adequate information on the health effects of each substance is available or in the

process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects; and

(C) where, appropriate, toxicological testing directed toward determining the maximum exposure level of a hazardous substance that is safe for humans.

The profiles required to be prepared under this paragraph for those hazardous substances listed under paragraph (1) of subsection (d) shall be completed, at a rate of 25 per year, within four years after the date of the enactment of this section. A profile required on a substance listed pursuant to paragraph (2) of subsection (d) shall be completed within three years after addition to the list. The profiles prepared under this paragraph shall be of those substances highest on the list of priorities under subsection (d) for which profiles have not previously been prepared. Profiles required under this paragraph shall be revised and republished as necessary, but no less often than once every three years. Such profiles shall be provided to the States and made available to other interested parties.

(3) HEALTH EFFECTS RESEARCH.—For any hazardous substance for which adequate information is not available (or for which such information is under development as determined under paragraph (2)(B)), the Administrator of ATSDR shall assure the initiation of a program of research designed to determine the health effects of such hazardous substance. Where feasible, such program shall seek to develop methods to determine the health effects of such hazardous substance in combination with other hazardous substances with which it is commonly found. Before assuring the initiation of such program, the Administrator of ATSDR shall consider recommendations of the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act on the types of research that should be done and on who should do the research.

(4) COORDINATION.—In the development and implementation of any research program under this subsection, the Administrator of ATSDR and the Administrator shall coordinate such research program implemented under this subsection with programs of toxicological testing established under the Toxic Substances Control Act and the Federal Insecticide, Fungicide, and Rodenticide Act. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate in the discretion of the Administrator of ATSDR and consistent with such purpose, a research program under this subsection may be carried out using such programs of toxicological testing.

(f) HEALTH ASSESSMENTS.—

(1) FACILITIES ON NPL.—The Administrator of ATSDR shall perform a health assessment for each facility on the National Priorities List established under section 105 which meets each of the following criteria:

(A) The presence of a hazardous substance has been confirmed at the facility.

(B) Pathways of human exposure to hazardous substances have been demonstrated to exist at the facility, especially if such pathways involve direct contact with hazardous substances.

(C) A human population has been exposed, or there exists a significant possibility that a human population has been exposed, to hazardous substances through the identified pathways and there may exist a significant threat of current or future adverse health effects for the population so exposed.

The determination of whether any facility on such list meets such criteria shall be based on information provided by the Administrator regarding such criteria. Nothing in this paragraph shall preclude the Administrator of ATSDR from performing, where appropriate and consistent with the National Contingency Plan, health assessments of releases of hazardous substances from any other facilities, including facilities which are not on such list. The Administrator or any State may request the Administrator of ATSDR to perform a health assessment under this section. The Administrator of ATSDR and the Administrator shall coordinate the performance of health assessments under this section.

(2) PETITION TO ADMINISTRATOR OF ATSDR.—Any individual or group of individuals may submit a petition to the Administrator of ATSDR to perform a health assessment under this subsection. The petition shall provide evidence demonstrating that such individual or group is being exposed to a hazardous substance, and an empirical analysis of the level of exposure. The Administrator of ATSDR shall take action under paragraph (3)(A) if the Administrator of ATSDR determines that there is a reasonable likelihood that the exposure may present a significant risk to human health and that there is a reasonable likelihood that the hazardous substance is from one of the following facilities:

(A) A facility where such substance is (or was in the past) treated, stored, recycled, or disposed of, on a regular basis.

(B) A facility at which removal action is being taken (or was taken in the past) under any provision of this Act.

(3) INITIATION OR EXPLANATION REQUIRED.—Within 45 days after receipt of a petition under paragraph (2), the Administrator of ATSDR shall do one of the following:

(A) Initiate a health assessment.

(B) Publish a written explanation of one of the following:

(i) A determination that there is not a reasonable likelihood that the substance is from a facility referred to in paragraph (2).

(ii) A determination that there is not a reasonable likelihood that the exposure presents a significant risk to human health.

(iii) A determination that the evidence submitted or information available to the Administrator of ATSDR is not adequate to determine whether there is a reasonable likelihood that the substance is from a facility referred to in paragraph (2) or there is a reasonable like-

lihood that the exposure presents a significant risk to human health. If the Administrator of ATSDR determines under this clause that the evidence submitted is not adequate, the Administrator of ATSDR shall, in the written explanation, identify the additional information necessary for the Administrator of ATSDR to determine whether there is a reasonable likelihood that the substance is from a facility referred to in paragraph (2) or there is a reasonable likelihood that the exposure may present a significant risk to human health.

(C) Respond in writing to the petition submitted under paragraph (2) by setting forth a schedule for review of the petition or a schedule to initiate a health assessment.

Each assessment under this paragraph shall be completed within six months after the date on which the health assessment is initiated.

(4) PRIORITIES OF ASSESSMENTS.—In determining the priority in which to conduct health assessments under this subsection, the Administrator of ATSDR, in consultation with the Administrator, shall give priority to those facilities at which there is documented evidence of the release of hazardous substances, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of ATSDR existing health assessment data are inadequate to assess the potential risk to human health as provided in paragraph (7).

(5) RIFS.—Where a health assessment is done at a site on the National Priorities List, the Administrator of ATSDR shall complete such assessment promptly and, to the maximum extent practicable, before the completion of the remedial investigation and feasibility study at the facility concerned.

(6) NOTICE AND REPORTING.—Any State or political subdivision carrying out a health assessment for a facility shall report the results of the assessment to the Administrator of ATSDR and the Administrator and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of ATSDR shall state such recommendation in any report on the results of any assessment carried out directly by the Administrator of ATSDR for such facility and shall issue periodic reports which include the results of all the assessments carried out under this subsection.

(7) DEFINITION.—For the purposes of this section and section 111(c)(4), the term "health assessment" means a determination of the potential human health risks posed by a facility. A health assessment shall be based on but not limited to the following information:

(A) The nature and extent of contamination.

(B) The existence, scope, and magnitude of potential pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination).

(C) The size, population characteristics, and potential susceptibility of the community within the likely pathways of exposure.

(D) The comparison of measured or estimated human exposure levels which are identified for hazardous substances and any exposure levels for such hazardous substances which are determined to be of significance to human health, including but not limited to those determined in the toxicological profiles under subsection (e)(2).

(E) The comparison of appropriate existing morbidity and mortality data, relevant to the suspected population at risk of exposure, on diseases that may be associated with the observed levels of exposure.

If a significant excess of disease in a population is identified under subparagraph (E), the health assessment shall include appropriate epidemiological analyses, including the assessment of attributable risk, to determine the most likely explanations for that excess. An assessment may include literature searches, information summarization and evaluation of existing environmental data, pilot samples, testing for food chain contamination, and similar activities. The Administrator of ATSDR shall utilize appropriate data available from the Administrator to avoid duplication of effort.

(8) PURPOSE.—The purpose of health assessments shall be to assist in determining whether actions under subsection (k) of this section should be taken to reduce human exposure to hazardous substances from a facility and whether additional information on human exposure and associated health risks is needed and should be acquired by conducting epidemiological studies under subsection (g), establishing a registry under subsection (h), establishing a health surveillance program under subsection (i), or through other means. In using the results of health assessments for determining additional actions to be taken under this section, the Administrator of ATSDR may consider additional information on the risks to the potentially affected population from all sources of such hazardous substances including known point or nonpoint sources other than those from the facility in question.

(9) RESULTS, RECOMMENDATIONS, AND EVALUATIONS.—At the completion of each health assessment, the Administrator of ATSDR shall provide the Administrator and each affected State with the results of such assessment, including recommendations concerning the need to further reduce exposure. In addition, if the health assessment indicates that the release or threatened release concerned may pose a threat to human health or the environment, the Administrator of ATSDR shall so notify the Administrator who shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in section 105(a)(8)(A) to determine the national priority of such release or threatened release.

(10) RECOVERY OF COSTS.—In any case in which a health assessment performed under this subsection (including one required by section 3019(b) of the Solid Waste Disposal Act) discloses the exposure of a population to the release of a hazardous substance from a facility, the costs of such health assessment may be recovered as a cost of response under section 107 of this Act.

(g) Studies.—

(1) Pilot health effects studies.—

(A) Purpose.—Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment or on the basis of a petition of any individual or group of individuals which demonstrates that the individual or individuals are being exposed to a hazardous substance and provides an empirical analysis of the level of exposure, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals, in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.

(B) Initiation or explanation required.—Within 45 days after completion of a health assessment under this section or receipt of a petition under this paragraph, the Administrator of ATSDR shall—

(i) initiate a pilot health effects study under this paragraph; or

(ii) publish a written explanation of a determination that the release or threatened release that is the subject of the assessment, or the exposure that is the subject of the petition, does not present a significant risk to human health.

(C) Components of studies.—Each health effects study carried out under this subsection shall—

(i) ascertain the nature, magnitude, scope, and duration of the exposure of individuals to the hazardous substance concerned;

(ii) identify, where possible, other individuals within the community who may be exposed to the same release; and

(iii) include (but not be limited to)—

(I) a determination, where possible, of the source of any groundwater contamination involved;

(II) a toxicological and epidemiological evaluation of each hazardous substance involved; and

(III) any necessary medical testing of individuals.

(D) Deadline for completion.—Each study under this paragraph shall be completed within nine months after the date on which the health assessment is completed or the petition is filed.

(2) Full scale.—Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of such pilot study or other study or health assessment, the Administrator of ATSDR shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances from a release or threatened release.

(h) Registry.—

(1) Authority to establish.—In any case in which the results of a health assessment or epidemiologic study indicate a potential or observed significant risk to human health, the Ad-

ministrator of ATSDR shall evaluate whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection. The Administrator of ATSDR shall establish such registry when such evaluation determines that an effective mechanism can be established to satisfactorily maintain such registry over a sufficient period of time to accomplish the desired purposes of this paragraph and either—

(A) the registry could benefit its participants by prevention or early detection of serious adverse health effects from exposure to hazardous substances; or

(B) the registry could provide significant information not currently available on human health effects of exposure to one or more hazardous substances.

(2) UNLAWFUL DISCLOSURE.—The identity of any individual listed on a registry shall not be disclosed to any person except as may be necessary to carry out this section. Any person violating this paragraph shall be fined not more than $1,000 or imprisoned for not more than six months, or both, and shall be required to pay the costs of prosecution.

(i) HEALTH SURVEILLANCE PROGRAM.—Where the Administrator of ATSDR has determined that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances based on the results of a health assessment conducted under subsection (f), an epidemiologic study conducted under subsection (g), or an exposure registry that has been established under subsection (h), and the Administrator of ATSDR has determined that such exposure is the result of a release from a facility, the Administrator of ATSDR shall initiate a health surveillance program for such population. This program shall include but not be limited to—

(1) periodic medical testing where appropriate of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk; and

(2) a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

(j) REPORT EVERY TWO YEARS.—Two years after the date of the enactment of this subsection and every two years thereafter, the Administrator of ATSDR shall prepare and submit to the Administrator, the House Committees on Energy and Commerce and Public Works and Transportation and the Senate Committee on Environment and Public Works a report on the results of the activities of ATSDR regarding—

(1) health assessments and pilot health effects studies conducted;

(2) epidemiologic studies conducted;

(3) hazardous substances which have been listed under subsection (d), toxicological profiles which have been developed, and toxicologic testing which has been conducted or which is being conducted under subsection (e);

(4) registries established under subsection (h); and

(5) an overall assessment, based on the results of activities conducted by the Administrator of ATSDR, of the linkage between human exposure to individual or combinations of haz-

ardous substances due to releases from facilities covered by this Act or the Solid Waste Disposal Act and any increased incidence or prevalence of adverse health effects in humans.

(k) Reduction of Exposure.—

(1) Significant human exposure level.—If a health assessment or other study receiving peer review carried out under this Act identifies an individual or individuals exposed to a hazardous substance in a manner which presents a significant risk to human health, the Administrator shall take such steps as may be necessary to abate the risk. Such steps may include the following:

(A) Provision of alternate household water supplies.

(B) Temporary or permanent relocation of individuals.

(2) Insufficient information.—In any case in which information is insufficient, in the judgment of the Administrator of ATSDR or the Administrator to determine a significant human exposure level with respect to a hazardous substance, the Administrator may take such steps as may be necessary to reduce the exposure of any person to such hazardous substance to such level as the Administrator deems necessary to protect human health.

(l) No Delay of Other Action.—In the case of any hazardous substance which is subject to a petition or study under this section, nothing in this section shall be construed to delay or otherwise impair the authority of the Administrator to exercise any authority vested in the Administrator under any other provision of law, including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act or the response and abatement authorities of this Act.

(m) Peer Review.—All studies and results of research (including health assessments) and all toxicological profiles conducted under this section shall be reported or adopted only after appropriate peer review. Such peer review shall be completed within a period of 60 days and shall be conducted by panels consisting of no less than three nor more than seven members, who shall be scientific experts selected for such purpose by the Administrator of ATSDR on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Administrator of ATSDR.

(n) Educational Materials.—In the implementation of this section and other health-related authorities of this Act, the Administrator of ATSDR shall assemble and distribute to the States, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed in subsection (d)), through such means as the Administrator of ATSDR deems appropriate.

(o) Direct Action and Cooperative Agreements.—The activities described in this section and section 111(c)(4) shall be carried out by the Administrator of ATSDR, either directly or through cooperative agreements with States (or political subdivisions thereof) which the Administrator of ATSDR determines are capable of car-

rying out such activities. Such activities shall include provision of consultations on health information, the conduct of health assessments, including those required under section 3019(b) of the Solid Waste Disposal Act, health studies, registries, and health surveillance.

(p) MINIMUM NUMBER OF EMPLOYEES.—The President shall provide adequate personnel for ATSDR, which shall not be fewer than 100 employees. For purposes of determining the number of employees under this subsection, an employee employed by ATSDR on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek.

(q) FEDERAL FACILITIES.—In accordance with section 120, the Administrator of ATSDR shall have the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as such Administrator has with respect to any nongovernmental entity.

(r) EMERGENCIES.—In cases of public health emergencies caused or believed to be caused by exposure to toxic substances, the Administrator of ATSDR—

(1) shall provide medical testing and care to exposed individuals, including, but not limited to, tissue sampling, chromosomal testing, epidemiological studies, or any other assistance appropriate under the circumstances;

(2) shall offer technical assistance and consultation to local and State health authorities that are providing medical testing and care to exposed individuals; and

(3) shall use any authority provided under this section;

whether or not the determinations or other preliminary steps otherwise required under this section have been made or taken. Nothing in this subsection shall be construed to create an entitlement program.

(s) HAZARDOUS SUBSTANCE RESEARCH AND TRAINING.—

(1) AUTHORITIES OF SECRETARY.—The Secretary of Health and Human Services, in consultation with the Administrator, may conduct and support the following (through grants, cooperative agreements, and contracts):

(A) Research (including epidemiologic and ecologic studies and development and demonstration programs) in the following:

(i) Advanced techniques for the detection, assessment, and evaluation of the effects on human health of hazardous substances.

(ii) Methods to assess the risks to human health presented by hazardous substances.

(B) Advanced training in ecology, environmental health, chemical engineering, and molecular biology and in the techniques and methods referred to in subparagraph (A).

(2) COOPERATION.—The Director of the National Institute for Environmental Health Sciences shall cooperate fully with those agencies specified in section 119(c)(1)–(7) in carrying out the purposes of this section.

(3) RECIPIENTS.—A grant, cooperative agreement, or contract may be made or entered into under paragraph (1) with an ac-

credited institution of higher education. The institution may carry out the research or training under the grant, cooperative agreement, or contract through contracts, including contracts with the following:

(A) Generators of hazardous wastes.

(B) Persons involved in the development of innovative technologies, processes, equipment, and related devices, which can be used to control, contain, and treat hazardous substances.

(C) Owners and operators of facilities at which hazardous substances are located.

(D) State and local governments.

(4) PROCEDURES.—In making grants and entering into cooperative agreements and contracts under this subsection, the Secretary of Health and Human Services shall act through the Director of the National Institute for Environmental Health Sciences who shall follow the procedures applicable to grants and contracts under title IV of the Public Health Service Act.

SEC. 117. ALTERNATIVE AND INNOVATIVE TREATMENT TECHNOLOGY RESEARCH, EVALUATION, AND DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Administrator shall carry out a program of research, evaluation, testing, development, and demonstration of alternative and innovative treatment technologies which may be utilized in remedial actions to achieve more permanent protection of human health and the environment.

(b) TECHNOLOGY TRANSFER.—

(1) PROGRAM.—In carrying out the program established under subsection (a), the Administrator shall conduct a technology transfer program, including the development, collection, evaluation, coordination, and dissemination of information relating to the utilization of alternative and innovative treatment technologies for remedial actions. The Administrator shall establish and maintain a central reference library for such information. Subject to the provisions of section 552 of title 5, United States Code, section 1905 of title 18, United States Code, and paragraph (2) of this subsection, the information maintained by the Administrator shall be made available to Federal, State, and other government agencies and to the public in a manner that will facilitate its dissemination.

(2) PROTECTION OF PROPRIETARY INFORMATION.—Upon a showing satisfactory to the Administrator by any person that any information, or portion thereof, obtained under this section by the Administrator directly or indirectly from such person, would, if made public, divulge—

(A) trade secrets; or

(B) other proprietary information of such person;

the Administrator shall not disclose such information, and disclosure thereof shall be punishable under section 1905 of title 18, United States Code.

(3) LIMITATION ON INTERPRETATION.—Nothing in this subsection shall be construed to authorize the withholding of information from Congress or any committee of Congress.

(c) Contracts and Grants.—In carrying out subsection (a), the Administrator may enter into contracts and cooperative agreements with, and make grants to, persons, State and local governments and other public entities, and nonprofit private entities (as described in section 501(c)(3) of the Internal Revenue Code of 1954). Each contract, agreement, and grant under this section shall contain appropriate cost-sharing arrangements.

(d) Research Assistance.—

(1) Assistance and information.—The Administrator may, consistent with the provisions of this section, provide assistance or information to persons, State and local governments and other public entities, and nonprofit private entities who wish to have alternative and innovative treatment technologies tested or evaluated for utilization in remedial activities.

(2) Use of sites.—Subject to such terms and conditions as the Administrator shall require to assure the protection of human health and the environment, the Administrator, in cooperation with the States, may arrange for the use of sites listed on the National Priorities List under section 105(a)(8)(B) for the purposes of research, testing, evaluation, development, and demonstration under this section.

(3) Saving provision.—Nothing in this section shall be construed to affect the provisions of the Solid Waste Disposal Act.

(e) Enumerated Programs.—In carrying out this section, the Administrator may conduct and support the following, among other things:

(1) Research and development and demonstration programs in the following:

(A) Methods and technologies to detect hazardous substances in the environment and methods and technologies to reduce the amount and toxicity of hazardous substances, including recycling, incineration, biodegradation, chemical inactivation, and encapsulation.

(B) Site specific demonstrations of innovative technologies applied to all phases of hazardous substances response including, as appropriate, the testing, evaluation, and field demonstration of innovative technologies, processes, equipment, and related devices which can be used for such purposes.

(C) Improved safety practices in, and equipment for, the handling and disposal of hazardous substances.

(2) Training for the following:

(A) For employees who handle hazardous substances, training in the procedures for the handling and removal of hazardous substances.

(B) For State and local health and environment agency personnel, training in the management of facilities at which hazardous substances are located and in the evaluation of the hazards to human health presented by such facilities.

(f) Designation of Demonstration Sites.—In carrying out the program under this section, the Administrator shall, within two years after the date of the enactment of this section, and after notice and an opportunity for public comment, designate at least ten sites

listed under section 105(a)(8)(B) as appropriate for field demonstrations of alternative and innovative treatment technologies. Within 12 months after designation of a site, the Administrator shall begin or cause to begin a demonstration of alternative and innovative treatment technologies at such site. In designating such sites, the Administrator shall, consistent with the protection of human health and the environment, consider each of the following criteria:

(1) The potential for contributing to solutions to those hazardous substance disposal problems which pose the greatest threat to human health, which are not being adequately controlled under present technologies, or which otherwise pose significant management difficulties.

(2) The availability of technologies which have been sufficiently developed for field demonstration and which are likely to be cost-effective and reliable.

(3) The suitability of the sites for demonstrating such technologies, taking into account the physical, biological, chemical, and geological characteristics of the sites, the extent and type of contamination found at the sites, and whether or not demonstrations at the sites may be conducted in such a manner as to assure the protection of human health and the environment.

(4) The likelihood that the data to be generated from the demonstration at the site will be applicable to other sites.

(g) EXPEDITED APPROVAL OF PERMITS.—The Administrator may expedite approval of any permit under the Solid Waste Disposal Act for any alternative or innovative technology under this section in order to promote prompt, commercial-scale tests of such technology.

(h) LIABILITY FOR FIELD DEMONSTRATIONS.—

(1) LIABILITY OF PERSONS CONDUCTING FIELD DEMONSTRATIONS.—

(A) IN GENERAL.—Notwithstanding the provisions of section 114, no person, public entity, or nonprofit private entity, in the course of conducting a field demonstration pursuant to this section, shall be liable under this title, under any other Federal law, under the law of any State or political subdivision, or under common law to any person for injuries, costs, damages, expenses, or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss) which results from a release or threatened release from a facility as a result of such field demonstration.

(B) NEGLIGENCE, ETC.—Subparagraph (A) shall not apply in the case of a release that is caused by conduct of the person, public entity, or nonprofit private entity conducting a field demonstration which is negligent or reckless or constitutes intentional misconduct.

(C) PERSONS RETAINED OR HIRED.—Any person retained or hired, by a person, public entity, or nonprofit private entity conducting a field demonstration pursuant to this section, to provide any services relating to such field demonstration shall have the same exemption from liability provided to the person, public entity, or nonprofit private entity conducting such field demonstration.

(2) Savings provisions.—

(A) Liability of other persons.—Nothing in this subsection shall affect the liability under this Act or under any other authority of Federal or State law of any person other than a person, public entity, or nonprofit private entity conducting a field demonstration pursuant to this section.

(B) Burden of plaintiff.—Nothing in this subsection shall affect the plaintiff's burden of establishing liability under this title.

(3) Exception to exemption.—The exemption provided under paragraph (1) shall not apply to any person covered by the provisions of paragraph (1), (2), (3), or (4) of section 107(a) with respect to the release or threatened release concerned if such person would be covered by such provisions even if such person had not carried out any actions referred to in paragraph (4) of this subsection.

(4) Definition.—For the purpose of this subsection, a person, public entity, or nonprofit private entity is "conducting a field demonstration pursuant to this section" if such entity or person is carrying out a written contract or agreement with—

(A) the Administrator;
(B) any other Federal agency;
(C) a State; or
(D) any responsible party;

to conduct demonstrations at a site listed under section 105(a)(8)(B) of alternative or innovative treatment technologies as defined in subsection (k).

(5) Study.—Within one year after the date of the enactment of this section, the Administrator shall transmit to Congress a study of the effects of the standards of liability and financial responsibility requirements imposed by this Act on the cost of, and incentives for, developing and demonstrating alternative and innovative treatment technologies.

(i) Small Business Participation.—The Administrator shall, to the maximum extent practicable, provide adequate opportunity for small business participation in the activities authorized under this section.

(j) Reports to Congress.—

(1) Annual report.—At the time of the submission of the annual budget request to Congress, the Administrator shall submit a report to the appropriate committees of the House of Representatives and the Senate on the progress of the research, development, and demonstration program under this section, including an evaluation of the demonstration projects undertaken, findings with respect to the efficacy of such demonstrated technologies in achieving permanent and significant reductions in risk from hazardous substances and pollutants and contaminants, the costs of such demonstrations, and the potential applicability of, and projected costs for, such technologies at other uncontrolled sites.

(2) Congressional review.—If the total estimated Federal contribution to the cost of any field demonstration project under this section exceeds $5,000,000, the Administrator shall

provide a full and comprehensive report on the proposed demonstration project to the appropriate committees of the House of Representatives and the Senate. No funds may be expended for such project under this section prior to the expiration of 60 calendar days (not including any day on which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain) from the date on which the Administrator's report on the proposed project is received by such committees.

(k) DEFINITION.—For the purposes of this section, the term "alternative and innovative treatment technologies" means those technologies which permanently alter the composition of hazardous substances through chemical, biological, or physical means so as to significantly reduce the toxicity, mobility, or volume (or any combination thereof) of the hazardous substances and pollutants and contaminants being treated.

(l) AVAILABILITY OF FUNDS.—Amounts made available to carry out this section shall remain available until expended.

SEC. 118. UNIVERSITY HAZARDOUS SUBSTANCE RESEARCH CENTERS.

(a) GRANT PROGRAM.—The Administrator shall make grants to one or more institutions of higher learning to establish and operate one hazardous substance research center in each of the Federal regions of the Environmental Protection Agency.

(b) RESPONSIBILITIES OF CENTERS.—The responsibilities of each hazardous substance research center established under this section shall include, but not be limited to, the conduct of research and training relating to the manufacture, use, transportation, disposal, and management of hazardous substances and publication and dissemination of the results of such research.

(c) APPLICATIONS.—Any comprehensive institution of higher learning interested in receiving a grant under this section shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

(d) SELECTION CRITERIA.—The Administrator shall select recipients of grants under this section on the basis of the following criteria:

(1) The hazardous substance research center shall be located in a State which is representative of the needs of the Federal region for improved hazardous waste management.

(2) The grant recipient shall be located in an area which has experienced problems with hazardous substance management.

(3) There is available to the grant recipient for carrying out this section demonstrated research and extension resources.

(4) The capability of the grant recipient to provide leadership in making national and regional contributions to the solution of both long-range and immediate hazardous substance management problems.

(5) The grant recipient shall make a commitment to support ongoing hazardous substance research programs with budgeted institutional funds of at least $100,000 per year.

(6) The grant recipient shall have an interdisciplinary staff with demonstrated expertise in hazardous substance management and research.

(7) The grant recipient shall have a demonstrated ability to disseminate results of hazardous substance research and educational programs through an interdisciplinary continuing education program.

(8) The projects which the grant recipient proposes to carry out under the grant are necessary and appropriate.

(e) MAINTENANCE OF EFFORT.—No grant may be made under this section in any fiscal year unless the recipient of such grant enters into such agreements with the Administrator as the Administrator may require to ensure that such recipient will maintain its aggregate expenditures from all other sources for establishing and operating a regional hazardous substance research center and related research activities at or above the average level of such expenditures in its two fiscal years preceding the date of the enactment of this section.

(f) FEDERAL SHARE.—The Federal share of a grant under this section shall not exceed 80 percent of the costs of establishing and operating the regional hazardous substance research center and related research activities carried out by the grant recipient.

(g) ADMINISTRATION THROUGH THE OFFICE OF THE ADMINISTRATOR.—Administrative responsibility for carrying out this section shall be in the Office of the Administrator.

(h) EQUITABLE DISTRIBUTION OF FUNDS.—The Administrator shall allocate funds made available to carry out this section equitably among the Federal regions.

(i) TECHNOLOGY TRANSFER ACTIVITIES.—Not less than five percent of the funds made available to carry out this section for any fiscal year shall be available to carry out technology transfer activities.

SEC. 119. NATIONAL RESEARCH ADVISORY COUNCIL.

(a) ESTABLISHMENT.—The President shall establish in the Environmental Protection Agency a council to be known as the "National Research Advisory Council" (hereinafter in this section referred to as the "Council").

(b) PURPOSE.—The purpose of the Council shall be to assist the Administrator and the Administrator of ATSDR in carrying out sections 116, 117, and 118 of this Act.

(c) MEMBERSHIP.—The membership of the Council shall consist of the following:

(1) The Assistant Administrator of the Environmental Protection Agency for the Office of Research and Development who shall serve as chairman.

(2) The Assistant Administrator of the Environmental Protection Agency for Hazardous Waste and Environmental Response.

(3) The Director for the Center for Environmental Health in the Centers for Disease Control.

(4) The Director of the National Institute for Occupational Safety and Health.

(5) The Director of the National Cancer Institute.

(6) The Administrator of ATSDR.

(7) The Director of the National Center for Toxicologic Research of the Food and Drug Administration.

(8) One representative of the toxic chemical waste producing industry.

(9) One representative of entities engaged in the management of toxic chemical wastes.

(10) Three representatives of institutions of higher education (one from the field of medicine, one from the field of chemical engineering, and one from the field of biological sciences).

(11) Two representatives from State and local health or environmental agencies.

(12) One representative from community based organizations concerned with hazardous substances.

(13) One representative with scientific expertise from a national environmental organization concerned with hazardous substances.

(d) Term of Members; Pay.—Each of the members appointed by the Administrator shall serve for a term of five years. Members of the Council shall serve without pay.

(e) Meetings.—The Council shall meet at least annually and at such other times as the chairman may designate.

(f) Information From Other Federal Agencies.—Subject to subchapter II of chapter 5 of title 5, United States Code, the Council may secure directly from any department or agency of the United States information necessary to enable it to carry out this subsection. Upon request of the chairman of the Council, the head of such department or agency shall furnish such information to the Council.

(g) Advisory Committee.—To assist the Council in carrying out its functions, the Administrator shall appoint an advisory committee from the membership of the Council. The advisory committee shall coordinate the research and training to be carried out by the grant recipients under section 118, disseminate the results of such research, act as a clearinghouse between hazardous substance research centers and the hazardous substance disposal industry, and review and evaluate programs carried out by such centers. The Administrator shall appoint the members of the advisory committee as follows, with a view toward maintaining a balanced membership in terms of the training and experience of the members:

(1) Four officers of the Environmental Protection Agency each of whom represents a laboratory of such Agency.

(2) Four representatives of State and local governments.

(3) Four representatives of the hazardous waste disposal industry.

A vacancy in the membership of the committee shall be filled in the manner in which the original appointment was made. The chairman of the committee shall be designated by the Administrator.

(h) Applicability of Advisory Committee Act.—Section 14 of the Federal Advisory Committee Act, relating to termination of advisory committees, shall not apply to the Council or the advisory committee established under this section.

(i) Planning.—Within one year after the date of the enactment of this section, the Council shall issue a plan for the implementation of research under sections 116, 117, and 118. The plan shall include priorities for actions and include research and training relevant to scientific and technological issues resulting from site specific hazardous substance response experience. The plan shall also include consideration of the development and evaluation of cleanup technologies to meet the standards set under section 121. The advisory com-

mittee appointed under subsection (g) shall be provided an opportunity to review and comment on the plan and priorities and assist appropriate coordination among those officials specified in paragraphs (1) through (7) of subsection (c).

SEC. 120. FEDERAL FACILITIES.

(a) APPLICATION OF ACT TO FEDERAL GOVERNMENT.—

(1) IN GENERAL.—Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107 of this Act.

(2) APPLICATION OF GUIDELINES, ETC., TO FEDERAL FACILITIES.—All guidelines, rules, regulations, procedures, and criteria which are applicable to preliminary assessments carried out under this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable with respect to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the same extent as such guidelines, rules, regulations, and criteria are applicable with respect to other facilities. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, procedures, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act.

(3) EXCEPTIONS.—This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to financial responsibility. Nothing in this Act shall be construed to require a State to comply with section 104(c)(3) in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

(4) STATE LAWS.—State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States when such facilities are not included on the National Priorities List.

(b) NOTICE.—Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act (in addition to the information required under section 3016(a)(3) of such Act) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

(c) Federal Agency Hazardous Waste Compliance Docket.—

(1) Establishment.—The Administrator shall establish a special Federal agency hazardous waste compliance docket for each department, agency, or instrumentality of the United States which shall contain each of the following:

(A) The inventory required to be submitted by the department, agency, or instrumentality in accordance with section 3016 of the Solid Waste Disposal Act and subsection (b) of this section.

(B) Information submitted by the department, agency, or instrumentality under section 3005 or 3010 of such Act.

(C) Information submitted by the department, agency, or instrumentality under section 103 of this Act.

(2) Inspection.—The docket established under this subsection shall be available for public inspection at reasonable times. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the docket under this subsection.

(3) Periodic notices.—Six months after establishment of the docket under this subsection and every six months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the preceding six-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket.

(d) Evaluation.—

(1) Deadline.—Not later than January 31, 1987, where the Administrator determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment, the Administrator shall evaluate each facility included in the docket established under subsection (c) in accordance with the criteria established under the National Contingency Plan for determining priorities among releases for inclusion on the National Priorities List. Upon the receipt of a petition from the Governor of any State, the Administrator shall make such an evaluation of any facility included in the docket.

(2) Deadline for inclusion.—Within 12 months after completion of the evaluation of a facility, the Administrator shall include the facility on the National Priorities List if the facility meets the criteria for inclusion on such list. Such criteria shall be applied in the same manner as the criteria are applied to facilities which are owned or operated by other persons.

(e) Required Action by Department.—

(1) RIFS.—Not later than six months after the inclusion of any facility on the National Priorities List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator, commence a remedial investigation and feasibility study for such facility. In the case of any facility which is listed on such list before the date of the enactment of this section, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator, commence such an investi-

gation and study for such facility within one year after such date of enactment.

(2) COMMENCEMENT OF REMEDIAL ACTION; INTERAGENCY AGREEMENT.—The Administrator shall review the results of each investigation and study conducted as provided in paragraph (1). Within 180 days thereafter, the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the investigation and study. For purposes of completing the remedial action as promptly as practicable, each department, agency, or instrumentality shall request adequate funding in the President's annual budget submittal to the Congress. For purposes of public participation in accordance with section 123, the proposal of a plan for remedial action in an interagency agreement shall be treated as the proposal of a plan for remedial action and the adoption of such an agreement shall be treated as the adoption of a final plan.

(3) CONTENTS OF AGREEMENT.—Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

(A) A review of alternative remedial actions and selection of a remedial action plan, including construction design by the Administrator.

(B) A schedule for the completion of each such remedial action.

(C) Arrangements for long-term operation and maintenance of the facility.

The concurrence of the State in which the facility is located shall be required for the selection of the remedial action to be carried out at the facility.

(4) ANNUAL REPORT.—Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to, each of the following items:

(A) A report on the progress in reaching interagency agreements under this section.

(B) The specific cost estimates and budgetary proposals involved in each interagency agreement;

(C) A report on progress in conducting investigations and studies under paragraph (1).

(D) A report on progress in conducting remedial actions.

(f) TRANSFER OF AUTHORITIES.—Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the Administrator or otherwise, to any other officer or employee of the United States or to any other person.

(g) PROPERTY TRANSFERRED BY FEDERAL AGENCIES.—

(1) Notice.—After the last day of the six-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any federally regulated hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place.

(2) Form of notice; regulations.—Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after the date of the enactment of this subsection but not later than 18 months after such date of enactment, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

(3) Contents of certain deeds.—After the last day of the six-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain—

(A) a notice of the type and quantity of such hazardous substances,

(B) notice of the time at which such storage, release, or disposal took place,

(C) a description of the remedial action taken, if any, and

(D) a covenant warranting that—

(i) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and

(ii) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States.

(h) Obligations Under Solid Waste Act.—Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act (including corrective action requirements).

(i) State Coordinator.—A State may request and be granted by the Administrator the role of on-scene coordinator for Federal facility projects within its boundaries. The necessary and reasonable expenses of the on-scene coordinator shall be paid to the State by the Agency.

SEC. 121. CLEANUP STANDARDS.

(a) BASIC REQUIREMENTS.—The Administrator shall select appropriate cost-effective remedial actions to be carried out under section 104 or secured under section 106. Such actions—

(1) shall be in accordance with the National Contingency Plan,

(2) shall be in accordance with the requirements of this section, and

(3) shall require that level or standard of control of each hazardous substance or pollutant or contaminant at the facility which is necessary to protect human health and environment.

(b) PERMANENT SOLUTIONS.—

(1) GENERAL REQUIREMENT.—If a permanent solution meets the requirements of subsection (a) with respect to a facility and such solution is feasible and achievable, the Administrator shall, to the maximum extent practicable, select such solution as the remedial action for the facility.

(2) DETERMINATION OF PRACTICABILITY.—For purposes of this section, the Administrator shall determine whether or not a solution or remedial action is practicable by taking into consideration the following factors, among others: availability of technology, installation period, uncertainties related to level of performance of the solution or remedial action, level of public support for the solution or remedial action, and whether or not the solution or remedial action has been achieved in practice at any other facility or site which has characteristics similar to the facility or site concerned.

(c) INTERIM MEASURES.—

(1) IN GENERAL.—If the Administrator determines that a permanent solution is not feasible and achievable with respect to any release or threatened release of a hazardous substance or pollutant or contaminant, the Administrator shall provide such containment and other interim measures as he deems necessary to protect human health and the environment during an interim period until a permanent solution becomes feasible and achievable. Such interim measures shall provide the maximum level of control of the hazardous substance or pollutant or contaminant which the Administrator determines to be feasible and achievable.

(2) ABOVE-GROUND STRUCTURES.—If the Administrator determines that a permanent solution is not feasible and achievable, the Administrator shall encourage remedial actions in which hazardous substances and pollutants and contaminants are securely contained in such above-ground engineered structures as the Administrator deems necessary to protect human health and the environment during an interim period until a permanent solution becomes feasible and achievable.

(d) TREATMENT OF SITES AND FACILITIES IN INTERIM CATEGORY.—

(1) SEPARATE CATEGORY ON NPL.—Whenever a determination is made that a permanent solution is not feasible and achievable with respect to a release at any site or facility, the site or facility shall be placed in a separate category on the National Priorities List labelled "Interim Category".

(2) Review of interim category sites or facilities.—The Administrator shall review each site or facility in the Interim Category on the National Priorities List within five years following its placement in such category and at subsequent intervals of 10 and 15 years after such placement. Such review shall include—

(A) a determination whether the interim measures taken with respect to such site or facility under subsection (c) are adequately protecting human health and the environment;

(B) a determination whether a permanent solution is feasible and achievable at such site or facility at the time of such review; and

(C) a determination whether additional interim measures are feasible and achievable at the site or facility at the time of such review.

(3) No permanent solution feasible and achievable.—If the Administrator determines—

(A) under paragraph (2) that interim measures taken for any site or facility are not protecting human health and the environment, and

(B) that a permanent solution is not feasible and achievable,

he shall, to the maximum extent practicable, undertake such additional interim measures as are feasible and achievable.

(e) Selection of Remedial Action.—In evaluating alternative remedial actions (including whether to utilize onsite or offsite remedial actions), the Administrator shall specifically assess the long-term effectiveness of various alternatives, including an assessment of permanent solutions and alternative treatment technologies and resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant, taking into account each of the following:

(1) The long-term uncertainties associated with land disposal.

(2) The goals, objectives, and requirements of the Solid Waste Disposal Act.

(3) The persistence, degradability in nature, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents.

(4) The potential threat to human health and the environment associated with excavation, transportation, and redisposal.

(5) Short- and long-term potential for adverse health effects from human exposure.

(6) Long-term maintenance costs.

(f) Preferred Actions.—Remedial actions which significantly reduce the volume, toxicity, or mobility of the hazardous substance or pollutant or contaminant are to be preferred over remedial actions which do not result in such reductions.

(g) Onsite Remedial Action.—

(1) Applicability.—This subsection shall apply only to hazardous substances and pollutants and contaminants which remain onsite.

(2) APPLICATION OF OTHER FEDERAL ENVIRONMENTAL STANDARDS.—If any—

(A) standard under one or more provisions of the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Federal Water Pollution Control Act, or the Solid Waste Disposal Act, or

(B) water quality criteria under any provision of the Federal Water Pollution Control Act,

is applicable to the hazardous substance or pollutant or contaminant concerned and is relevant and appropriate under the circumstances presented by the release or threatened release of such hazardous substance or pollutant or contaminant, the remedial action selected under section 104 or secured under section 106 shall require a level or standard of control for such hazardous substance or pollutant or contaminant which is equivalent to whichever of such applicable relevant and appropriate standards or criteria the Administrator determines to be most stringent.

(3) MORE STRINGENT STATE STANDARDS.—

(A) APPLICATION.—If the Administrator determines that—

(i) a standard under a State environmental law is—

(I) applicable to the hazardous substance or pollutant or contaminant concerned and is relevant and appropriate under the circumstances presented by the release or threatened release of such hazardous substance or pollutant or contaminant; and

(II) more stringent than the most stringent standard selected under paragraph (2) or the standard that applies under this section in the absence of an applicable and relevant and appropriate standard under paragraph (2); and

(ii) there is a cost-effective remedial action which will achieve such State standard and is feasible and achievable and meets the requirements of this section;

and if the State agrees to application of such standard to the hazardous substance or pollutant or contaminant and to comply with subparagraph (B), the Administrator shall select that remedial action.

(B) STATE SHARE.—If a more stringent State standard is applied under this paragraph in the case of a remedial action the costs of which are being paid in whole or in part from the Fund, the Administrator shall determine the amount by which the costs of the remedial action achieving such standard exceed the costs that would have been incurred for remedial action if subparagraph (A) were not in effect. The State in such a case shall pay 100 percent of such excess. If the State pays any such amount, the State may recover such amount from responsible parties in an action under section 107.

(4) CONTAINMENT.—Where the remedial action selected under section 104 or secured under section 106 at any facility does not include the removal of all hazardous substances and pollutants and contaminants from such facility, any remedial action pro-

viding for the containment of any such substance or pollutant or contaminant at such facility shall comply with the standards applicable to facilities required to obtain permits under section 3005 of the Solid Waste Disposal Act.

(5) CONTAMINATION FROM OTHER SOURCES.—The level or standard of control required in accordance with this subsection shall be required only regarding remedial actions taken with respect to the release or threatened release of a hazardous substance or pollutant or contaminant from the facility concerned and shall not be applicable to contamination from other sources.

(h) OFFSITE REMEDIAL ACTION.—

(1) TRANSFER TO A COMPLYING FACILITY.—In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant offsite, such hazardous substance or pollutant or contaminant shall only be transferred to a facility which is operating in compliance with sections 3004 and 3005 of the Solid Waste Disposal Act. Such substance or pollutant or contaminant may be transferred to a land disposal facility only if the facility is operating in compliance with such sections and only if the Administrator determines that the facility is not releasing hazardous waste or constituents thereof into the groundwater or surface water.

(2) TRANSFER TO A CONTROLLED FACILITY.—Notwithstanding paragraph (1), it the Administrator determines that—

(A) there is not reasonably available a facility complying with sections 3004 and 3005 of the Solid Waste Disposal Act; and

(B) any hazardous substance or pollutant or contaminant poses an imminent and substantial endangerment to human health and the environment;

a removal or remedial action may involve the transfer of such substance or pollutant or contaminant offsite to a land disposal facility from which releases into the groundwater and surface water are being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act.

(3) DEFINITION OF LAND DISPOSAL.—As used in this subsection, (A) the term "land disposal" has the meaning provided by section 3004 of the Solid Waste Disposal Act, and (B) the term "hazardous waste" means hazardous waste listed or identified under section 3001 of such Act.

(i) WAIVERS.—The Administrator may waive the application of the requirements of subsection (g) with respect to any facility and select alternative remedial or abatement action which does not comply with such requirements if the Administrator makes any of the following findings:

(1) The Administrator finds that such alternative remedial or abatement action will provide protection of human health and the environment substantially equivalent to the remedial or abatement action which would be necessary to comply with such requirements.

(2) The Administrator finds that compliance with the requirements of subsection (g) at that facility will result in greater risk

to human health and the environment than alternative options. This finding shall be on the basis of a quantitative assessment to the maximum extent possible.

(3) The Administrator finds that compliance with such requirements is technically impracticable from an engineering perspective.

(4) The Administrator finds that compliance with such requirements at that facility will consume a disproportionate share of the Fund, taking into account the size and complexity of the facility and benefits to human health and the environment which may be obtained through other uses under this Act of the sums available in the Fund which would be expended to comply with such requirements.

A finding under this subsection (other than paragraph (4)) may also be made with respect to remedial action financed in whole or in part by private parties. In such case, the finding shall be made on the basis of the same considerations as would be used with respect to remedial action financed by the Fund. A waiver may not be granted under this subsection if the granting of such waiver would result in a violation of any other provision of Federal law.

(j) PERMITS FOR ONSITE CLEANUP.—

(1) FEDERAL.—No permit shall be required under Federal law (other than the Clean Air Act and the Federal Water Pollution Control Act) for any response action undertaken by any person under section 104 or 106 at any facility to the extent that such action does not involve the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to another facility.

(2) STATE.—No permit shall be required under State or local law for any response action undertaken under section 104 or 106 at the facility at which the release or threatened release occurred.

(3) FEDERAL FACILITIES.—Nothing in this subsection shall apply to any action undertaken pursuant to this Act at a facility which is owned or operated by a department, agency, or instrumentality of the United States. Nothing in this subsection or in any other provision of this Act shall preempt or otherwise affect the application of any Federal or State law, including any permit requirement, to any response action undertaken at such a facility.

(4) STATE ENVIRONMENTAL IMPACT REQUIREMENTS.—Prior to commencement of a remedial investigation and feasibility study, the Administrator shall notify the State of such action. If, within 60 days thereafter, the State notifies the Administrator of any State procedural requirements which would be applicable under State statutes requiring preparation of environmental impact statements, the Administrator shall, in consultation with the State, establish functionally equivalent procedures governing the preparation of such investigation and study which adopt such State requirements unless the State waives such requirements. Compliance with this subsection shall be deemed to be compliance with such State environmental impact statutes. Nothing in this paragraph shall be construed to diminish the

procedural protections of the National Environmental Policy Act of 1969 or otherwise affect the application of such Act.

(5) Consolidation of permit procedures.—If one or more State or Federal permits are required for any response action, the Administrator shall consolidate the procedures, including any requirements for public participation, of such permits with the procedures under this Act. Nothing in this paragraph shall affect the substantive requirements of such permits.

(k) Destruction of Dioxin Wastes.—

(1) Treatment technology.—With respect to any remedial action involving a hazardous substance or pollutant or contaminant containing chlorinated or halogenated dioxins or chlorinated or halogenated dibenzofurans, the Administrator shall, to the maximum extent practicable, require treatment technology that provides each of the following:

(A) A destruction and removal efficiency meeting or exceeding 99.9999 percent.

(B) A treatment process which minimizes accidental emissions of chlorinated or halogenated dioxins, dibenzofurans, and other highly toxic materials to the environment.

(C) Protection against emissions of any hazardous substance or pollutant or contaminant into the air during normal operation and equivalent protection during nonsteady operations including start-up, shut-down, and power failures.

(D) Protection against secondary formation of halogenated dioxins and dibenzofurans.

(2) Requirements.—The requirements specified in paragraph (1) shall not apply if the Administrator determines that—

(A) an alternative method of treatment or disposal provides comparable or greater protection of human health and the environment, or

(B) there will be no human exposure to the hazardous substance or pollutant or contaminant containing chlorinated or halogenated dioxins or chlorinated or halogenated dibenzofurans.

(l) Value Engineering Review.—In any evaluation under this section of the cost effectiveness of a response action, the Administrator shall require value engineering review in accordance with this subsection. The Administrator shall require value engineering review for any response action to be carried out under this Act by the United States, a State, or a political subdivision of a State if the cost of the response action, including the cost of removal and construction related to hazardous substances and pollutants and contaminants, and including the cost of operation and maintenance, is projected to exceed $4,000,000. For purposes of this subsection, the term "value engineering review" means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

(m) Radon Contaminated Soil.—Any radon contaminated soil that is in a residential area and is the subject of a remedial action shall be disposed of at a facility licensed by the Nuclear Regulatory

Commission, or by a State pursuant to an agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021), for the land disposal of low-level radioactive waste. Any such remedial action which has been started, or for which a draft remedial investigation and feasibility study has been issued for public comment, before the date of the enactment of this subsection shall be completed as soon as is practicable after such date.

SEC. 122. SETTLEMENTS.

(a) EPA AUTHORITY TO ENTER INTO AGREEMENTS.—The Administrator may enter into an agreement with any person (including the owner or operator of the facility or vessel from which a release or substantial threat of release emanates, or any other potentially responsible person) to perform any action described in section 104 or in subsection (a) of section 106 if the Administrator determines that such action will be done properly by such person.

(b) AGREEMENTS WITH POTENTIALLY RESPONSIBLE PARTIES.—

(1) MIXED FUNDING.—An agreement under this section may provide that the Administrator will reimburse the parties to the agreement from the Fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform but which the Administrator has agreed to finance.

(2) REVIEWABILITY.—The Administrator's decisions regarding the availability of Fund financing under this subsection shall not be subject to judicial review under subsection (e).

(3) RETENTION OF FUNDS.—If, as part of any agreement, the Administrator will be carrying out any action and the parties will be paying amounts to the Administrator, the Administrator may, notwithstanding any other provision of law, retain and use such amounts for purposes of carrying out the agreement.

(c) LIMITATION OF LIABILITY.—

(1) IN GENERAL.—Subject to the provisions of this section, the Administrator may limit the liability under this Act, including any future liability, of each party to an agreement under subsection (a) arising from the release or threatened release that is the subject of the agreement. Except as provided in paragraph (4), any such limitation shall only extend to liability with respect to conditions known at the time of the agreement. Nothing in this paragraph shall limit or otherwise affect the authority of any court to review in the consent decree process under subsection (e) any limitation on liability contained in an agreement under this section.

(2) CONDITIONS.—The Administrator may only limit the liability of a person under paragraph (1) if each of the following conditions are met:

(A) The limitation would expedite response action consistent with the National Contingency Plan under section 105 of this Act.

(B) The person is in full compliance with any consent decree under section 106 for response to the release or threatened release concerned.

(C) The response action has been approved by the Administrator.

(3) FACTORS TO CONSIDER IN LIMITING LIABILITY.—

(A) Extent of liability limit based on permanence of remedy.—In determining the extent to which the liability of parties to an agreement shall be limited under this subsection, the Administrator shall be guided by the principle that a more complete limit of liability shall be given for a more permanent remedy proposed by such parties.

(B) Other factors.—The Administrator shall also consider the following factors in determining whether or not to limit the liability of a person under paragraph (1) and the extent of such limitation:

(i) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned.

(ii) The nature of the risks remaining at the facility.

(iii) The extent to which performance standards are included in the order or decree.

(iv) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

(v) The extent to which the technology used in the response action is demonstrated to be effective and advances the state of the art.

(vi) Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.

(4) Agreement covering 80 percent of costs.—

(A) Limitation on future liability.—If the parties to an agreement under this section agree to pay in the aggregate a portion of response costs which, when added to the portion of such costs determined by the Administrator to be the orphan share, is equal to or greater than 80 percent—

(i) any future liability of a party to the agreement arising from conditions at such facility not known at the time of the agreement shall not exceed the percentage of liability agreed to by such party in the agreement; and

(ii) the Administrator shall agree to pay from the Fund the orphan share.

(B) Limitation on construction.—Nothing in subparagraph (A) shall be construed as requiring the Administrator to enter into any agreement under this section.

(C) Orphan share defined.—For purposes of this paragraph, the term "orphan share" means any portion of liability arising from conditions at the concerned facility which the Administrator determines to be the responsibility of a party (i) who no longer exists and whose liabilities have not been assumed by another person, or (ii) who is not solvent.

(5) Contingency cleanup account.—There is established in the Hazardous Substances Superfund a separate account to be known as the "Contingency Cleanup Account" (hereinafter in this paragraph referred to as the "Separate Account". The Administrator may require parties whose liability is limited under

this subsection to pay premiums for future liability related to conditions not known at the time of an agreement under subsection (a). The amount of such premiums shall be deposited in the Separate Account. The Administrator may use the amounts placed in the Separate Account only to carry out future remedial action under this section with respect to any facilities which are subject to limitations of liability under this subsection.

(6) PERMANENT RELEASE FOR DESTRUCTION OF HAZARDOUS SUBSTANCES.—If the parties to an agreement under this section agree to destroy, eliminate, or permanently immobilize the hazardous constituents of the hazardous substances subject to such agreement, the Administrator shall provide a permanent and total release from liability with respect to such release for conditions known at the time of the agreement.

(7) SATISFACTORY PERFORMANCE.—Any limitation of liability provided to a party under this subsection shall be subject to the satisfactory performance by such party of its obligations under such agreement.

(d) ACTIONS AGAINST OTHER PERSONS.—If an agreement has been entered into under this section, the Administrator may take any action under section 106 against any person who is not a party to the agreement after the period for submitting under subsection (e)(2)(D) a proposal with respect to the agreement has expired. Nothing in this section shall be construed to affect either of the following:

(1) The liability of any person under section 106 or 107 with respect to any costs or damages which are not included in the agreement.

(2) The authority of the Administrator to maintain an action under section 106 or 107 against any person who is not a party to the agreement.

(e) ENFORCEMENT.—

(1) CLEANUP AGREEMENTS.—

(A) CONSENT DECREE.—Whenever the Administrator enters into an agreement under this section with any potentially responsible party with respect to action under section 104(a) or 106, following approval of the agreement by the Attorney General, the agreement shall be entered in the appropriate United States district court as a consent decree under such section. The Administrator need not make any finding regarding an imminent and substantial endangerment to the public health or the environment.

(B) EFFECT.—The entry of any consent decree under this subsection shall not be construed to be an acknowledgment by the parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or the environment. The participation by any party in the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

(C) STRUCTURE.—The Administrator may fashion a consent decree so that (i) the entering of such decree and com-

pliance with such decree or with any determination or agreement made pursuant to this section shall not be considered an admission of liability for any purpose, and (ii) the entering of such decree and such compliance and such determination or agreement shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

(D) Public participation.—

(i) Filing of proposed judgment.—At least 30 days before a final judgment is entered under subparagraph (A), the proposed judgment shall be filed with the court.

(ii) Opportunity for comment.—The Attorney General shall provide an opportunity to persons who are not named as parties to the action to comment on the proposed judgment before its entry by the court as a final judgment. The Attorney General shall consider, and file with the court, any written comments, views, or allegations relating to the proposed judgment. The Attorney General may (I) withdraw or withhold its consent to the proposed judgment if the comments, views, and allegations concerning the judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper, or inadequate, or (II) oppose an attempt by any person to intervene in the action.

(iii) Exception.—The Attorney General may permit an exception to the requirements of this subparagraph in a case in which extraordinary circumstances require a period shorter than 30 days or a procedure other than that provided in this subparagraph.

(2) 104(b) agreements.—Whenever the Administrator enters into an agreement under this section with any potentially responsible party with respect to action under section 104(b), the Administrator shall issue an order setting forth the obligations of such party. The United States district court for the district in which the release or threatened release occurs may enforce such order. Any party to an agreement under this section who fails or refuses to comply with the requirements of the order shall be liable for a civil penalty in an amount not to exceed $25,000 for each day during which such failure or refusal continues.

(f) Special Notice Procedures.—

(1) Notice.—Whenever the Administrator determines that a period of negotiation under this subsection would facilitate an agreement under this subsection with potentially responsible parties for taking action under subsection (b) of section 104 or under section 106, the Administrator shall so notify all such parties and shall provide them with information concerning each of the following:

(A) The identity of other notice recipients.

(B) The volume and nature of hazardous substances at the facility, to the extent such information is available.

(C) A ranking by volume of the substances at the facility, to the extent such information is available.

The Administrator shall make the information referred to in this paragraph available in advance of notice under this paragraph upon the request of a potentially responsible party in accordance with procedures provided by the Administrator. The provisions of subsection (e) of section 104 regarding protection of confidential information apply to information provided under this paragraph.

(2) NEGOTIATION.—

(A) MORATORIUM.—Except as provided in this subsection, the Administrator may not commence action under section 104(a) or take any action under section 106 for 120 days after providing notice and information under this subsection with respect to such action. Except as provided in this subsection, the Administrator may not commence action under section 104(b) for 90 days after providing notice and information under this subsection with respect to such action.

(B) PROPOSALS.—Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 106 shall have 60 days from the date of receipt of such notice to make a proposal to the Administrator for undertaking or financing the action under section 106. Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 104(b) shall have 60 days from the date of receipt of such notice to make a proposal to the Administrator for assisting or financing the action under section 104(b).

(C) ADDITIONAL PARTIES.—If an additional potentially responsible party is identified during the negotiation period or after an agreement has been entered into under this subsection concerning a release or threatened release, the Administrator may bring the additional party into the negotiation or enter into a separate agreement with such party.

(3) FAILURE TO PROPOSE.—If the Administrator determines that a good faith proposal for undertaking or financing action under section 106 has not been submitted within 60 days of the provision of notice pursuant to this subsection, the Administrator may thereafter commence action under section 104(a) or take an action against any person under section 106 of this Act. If the Administrator determines that a good faith proposal for assisting or financing action under section 104(b) has not been submitted within 60 days of the provision of notice pursuant to this subsection, the Administrator may thereafter commence action under 104(b).

(4) SIGNIFICANT PUBLIC HEALTH THREATS.—Nothing in this subsection shall limit the Administrator's authority to undertake response action regarding a significant threat to public health within the negotiation period established by this subsection.

(g) DE MINIMIS SETTLEMENTS.—

(1) REQUIREMENT.—Notwithstanding any other provision of this section, in an administrative or civil action under section

106 or section 107 of this Act, the Administrator shall, in appropriate cases, reach a final settlement with, and grant a release from liability to, any potentially responsible party in such an action where such settlement does not involve a substantial portion of the response costs at the facility concerned if both of the following are minimal in comparison to other hazardous substances at the facility:

(A) The amount of the hazardous substances contributed by that party to the facility.

(B) The toxic or other hazardous effects of the substances contributed by that party to the facility.

The Administrator shall reach any such settlement and grant any such release from liability as soon as possible after the Administrator has available the information necessary to reach such a settlement and grant such a release from liability.

(2) SETTLEMENTS WITH OTHER POTENTIALLY RESPONSIBLE PARTIES.—Nothing in this subsection shall be construed to affect the authority of the Administrator to reach settlements with other potentially responsible parties under this Act.

(h) DEFINITION OF POTENTIALLY RESPONSIBLE PARTY.—As used in this section, the term "potentially responsible party" means, with respect to any release or threatened release, a person against whom an action could be brought under section 106 with respect to such release or a person who would be liable under section 107 if response costs were incurred by the Administrator with respect to such release or threatened release.

SEC. 123. PUBLIC PARTICIPATION.

(a) PROPOSED PLAN.—Before adoption of any plan for remedial action to be undertaken by the Administrator or by a State or by any other person at any site, the Administrator or State, as appropriate, shall take both of the following actions:

(1) Publish a notice and brief analysis of the proposed plan and make such plan available to the public.

(2) Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility at issue regarding the proposed plan and regarding any waivers under section 121 (relating to cleanup standards). The Administrator shall keep a transcript of the meeting and make such transcript available to the public.

The notice and analysis published under paragraph (1) shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan.

(b) FINAL PLAN.—Notice of the final remedial action plan adopted shall be published and the plan shall be made available to the public before commencement of any remedial action. Such final plan shall be accompanied by a discussion of any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under subsection (a).

(c) EXPLANATION OF DIFFERENCES.—After adoption of a final remedial action plan—

(1) if any remedial action is taken,

(2) if any enforcement action under section 106 is taken, or

(3) if any settlement or consent decree under section 106 is entered into,

and if such action, settlement, or decree differs in any significant respects from the final plan, the Administrator shall publish an explanation of the significant differences and the reasons such changes were made.

(d) PUBLICATION.—For the purposes of this section, publication shall include, at a minimum, publication in a major local newspaper of general circulation.

(e) GRANTS FOR TECHNICAL ASSISTANCE.—

(1) AUTHORITY.—In accordance with rules promulgated by the Administrator, the Administrator may make grants available to any group of individuals which may be affected by a release or threatened release at any facility which is listed on the National Priorities List under the National Contingency Plan. Such grants shall be for the purpose of enabling the group to obtain technical assistance to review and assess data and information which has been prepared by the Administrator with respect to such facility and which is required to be published under this subsection.

(2) AMOUNT.—The amount of any grant under this subsection may not exceed $25,000 for a single grant recipient. The Administrator may waive the $25,000 limitation in any case where such waiver is necessary to carry out the purposes of this subsection. Each grant recipient shall be required, as a condition of the grant, to contribute at least 20 percent of the total of costs of the expert advice and technical assistance for which such grant is made. The Administrator may waive the 20 percent contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one grant may be made under this subsection with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.

SEC. 124. RESPONSE ACTION CONTRACTORS.

(a) LIABILITY OF RESPONSE ACTION CONTRACTORS AND STATES PROVIDING RESPONSE.—

(1) RESPONSE ACTION CONTRACTORS.—Notwithstanding section 114, a person who is a response action contractor with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility shall not be liable under this title, under any other Federal law, under the law of any State or political subdivision, or under common law to any person for injuries, costs, damages, expenses, or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release.

(2) STATES PROVIDING RESPONSE.—Notwithstanding section 114, a State which is providing a response action (other than under a response action contract) with respect to a release or

threatened release of a hazardous substance or pollutant or contaminant from a facility which the State does not own or operate shall not be liable under this title with respect to such release or threatened release.

(3) NEGLIGENCE, ETC.—Paragraphs (1) and (2) shall not apply in the case of a release that is caused by conduct of the response action contractor or State which is negligent or grossly negligent or which constitutes intentional misconduct.

(4) PERSONS RETAINED OR HIRED.—Any person retained or hired by a response action contractor, or by a State with respect to a release or threatened release from a facility described in paragraph (2), to provide any services relating to response action shall have the same exemption from liability provided to the response action contractor or State, as the case may be.

(5) EFFECT ON WARRANTIES.—Nothing in this subsection shall affect the liability of any person under any express or implied warranty under Federal, State, or common law.

(b) SAVINGS PROVISIONS.—

(1) LIABILITY OF OTHER PERSONS.—Nothing in this section shall affect the liability under this Act or under any other authority of Federal or State law of any person, other than a response action contractor or a State.

(2) BURDEN OF PLAINTIFF.—Nothing in this section shall affect the plaintiff's burden of establishing liability under this title.

(c) INDEMNIFICATION.—

(1) IN GENERAL.—The Administrator may agree to hold harmless and indemnify any response action contractor meeting the requirements of this subsection against any liability (including the expenses of litigation or settlement) arising out of the contractor's performance in carrying out response action activities under the response action contract and in accordance with this title to the extent that—

(A) such liability exceeds or is not covered by insurance made available, at a fair and reasonable price, to the contractor at the time the contractor enters into the contract to provide response action; and

(B) such liability is not caused by conduct of the contractor which is grossly negligent or which constitutes intentional misconduct.

(2) NONAPPLICABILITY.—This subsection shall not be subject to section 1301 or 1341 of title 31 of the United States Code or section 3732 of the Revised Statutes (41 U.S.C. 11).

(d) EXCEPTION TO EXEMPTION.—The exemption provided under subsection (a) and the authority of the Administrator to offer indemnification under subsection (c) shall not apply to any person covered by the provisions of paragraph (1), (2), (3), or (4) of section 107(a) with respect to the release or threatened release concerned if such person would be covered by such provisions even if such person had not carried out any actions referred to in subsection (f) of this section or described in subsection (a)(2).

(e) LIABILITY OF OTHER PERSONS UNAFFECTED.—Nothing in this section shall affect the liability under this title or under any

other Federal or State law of any person other than a response action contractor.

(f) Definitions.—For purposes of this section—

(1) Response action contract.—The term "response action contract" means any written contract or agreement entered into by a response action contractor (as defined in paragraph (2)(A) of this subsection) with—

(A) the Administrator;

(B) any other Federal agency;

(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 104(d)(1) of this Act; or

(D) any potentially responsible party, as defined by section 122;

to provide any response action under this Act with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment, or any ancillary services thereto for such facility.

(2) Response action contractor.—The term "response action contractor" means—

(A) any person who enters into a response action contract with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility and is carrying out such contract; and

(B) any person who is retained or hired by a person described in subparagraph (A) to provide any services relating to a response action.

(g) Competition.—To protect the health and safety of the public and to assure the selection of technically superior response action contractors, no potential offeror of a bid or proposal for a contract, subcontract or cooperative agreement to be performed and funded under the authority of this Act shall be denied the opportunity to compete for such contracts. Response action contractors and subcontractors for program management, construction management, architectural and engineering, surveying and mapping, and related services shall be selected in accordance with title IX of the Federal Property and Administrative Services Act of 1949. The Federal selection procedures or equivalent State requirements shall apply to appropriate contracts negotiated by all governmental agencies involved in carrying out this Act under memoranda of understanding, State cooperative agreements, or other means. Such procedures (or equivalent requirements) shall be followed by response action contractors and subcontractors.

SEC. 125. REIMBURSEMENT TO LOCAL GOVERNMENTS.

(a) Application.—Any general purpose unit of local government for a political subdivision which is affected by a release or threatened release at any facility may apply to the Administrator for reimbursement under this section.

(b) Reimbursement.—

(1) Temporary emergency measures.—The Administrator is authorized to reimburse local community authorities for ex-

penses incurred in carrying out temporary emergency measures necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance or pollutant or contaminant. Such measures may include, where appropriate, security fencing to limit access, response to fires and explosions, and other measures which require immediate response at the local level.

(2) Protection of public drinking water.—The Administrator is authorized to reimburse local communities for expenses incurred in carrying out emergency measures for the protection of public drinking water supplies as a result of contamination by the release of any hazardous substance or pollutant or contaminant into existing sources of public drinking water. Such measures may include, where appropriate, treatment to remove contaminants and other measures which require immediate response at the local level.

(c) Amount.—The amount of any reimbursement to any local authority under subsection (b)(1) may not exceed $25,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the units of local government having jurisdiction over the political subdivision in which the facility is located.

(d) Procedure.—Reimbursements authorized pursuant to this section shall be in accordance with rules promulgated by the Administrator within one year after the date of the enactment of this section.

SEC. 126. LANDFILL GAS OPERATORS.

(a) Exemption From Certain Liability.—Notwithstanding the provisions of section 114, a landfill gas operator shall not be liable in an action under section 106 or 107 of this Act, including an action for contribution or indemnification, for any amount with respect to a release or threatened release from a landfill gas operation or resulting from the operation of a landfill gas operation and for costs of cleanup, removal, response and remedial actions, and claims for natural resources damages under the laws of any State or political subdivision which impose liability or requirements with respect to the release of hazardous substances from a landfill gas operation. The preceding sentence shall not apply if the release or threatened release is caused by conduct of the landfill gas operator which is negligent, reckless, or constitutes intentional misconduct.

(b) Liability of Other Persons.—Nothing in this section shall affect the liability under this Act or under any authority of Federal or State law of any person, other than a landfill gas operator.

(c) Condensate.—

(1) Exclusion.—Except as provided in paragraph (2), a landfill gas operation shall not be deemed to be management, generation, transportation, treatment, storage, or disposal of any hazardous or liquid waste within the meaning of subtitle C of the Solid Waste Disposal Act.

(2) Regulation.—If the aqueous or hydrocarbon phase of the condensate or any other waste material removed from gas recovered from a landfill meets any of the characteristics identified under section 3001 of the Solid Waste Disposal Act, such con-

densate phase or other waste material shall be deemed a hazardous waste under subtitle C of the Solid Waste Disposal Act and shall be regulated accordingly under such subtitle.

(3) RETURN OF CONDENSATE.—Condensate removed from gas recovered by a landfill gas operator shall not be returned to the landfill in a container, unless such condensate is treated so that it is no longer a free liquid.

(d) DEFINITIONS.—As used in this section—

(1) LANDFILL GAS OPERATION.—The term "landfill gas operation" means the installation or operation of a system solely for the recovery or processing of methane from a landfill (including, but not limited to, recirculation to the landfill of condensate consisting of water and other liquids which do not contain hazardous substances or pollutants or contaminants and which are removed from the gas recovered from the landfill).

(2) LANDFILL GAS OPERATOR.—The term "landfill gas operator" means the owner or operator of a landfill gas operation.

SEC. 127. SECTION 3001(b)(3)(A)(i) WASTE.

(a) REVISION OF HAZARD RANKING SYSTEM.—This section shall apply only to facilities which are not included or proposed for inclusion on the National Priorities List and which contain substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act. As expeditiously as practicable, the Administrator shall revise the hazard ranking system in effect under the National Contingency Plan with respect to such facilities in a manner which assures appropriate consideration of each of the following site-specific characteristics of such facilities:

(1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison thereof with other wastes.

(2) The extent of, and potential for, release of such hazardous constituents into the environment.

(3) The degree of risk to human health and the environment posed by such constituents.

(b) INCLUSION PROHIBITED.—Until the hazard ranking system is revised as required by this section, the Administrator may not include on the National Priorities List any facility which contains substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act on the basis of an evaluation made principally on the volume of such waste and not on the concentrations of the hazardous constituents of such waste. Nothing in this section shall be construed to affect the Administrator's authority to include any such facility on the National Priorities List based on the presence of other substances at such facility or to exercise any other authority of this Act with respect to such other substances.

SEC. 128 WORKER PROTECTION STANDARDS.

(a) ISSUANCE.—The Secretary of Labor shall, pursuant to section 6 of the Occupational Safety and Health Act of 1970, issue, within one year after the date of the enactment of this section, standards for the health and safety protection of employees, including employees of State and local governments, engaged in hazardous waste operations.

(b) MINIMUM GENERAL REQUIREMENTS.—Such standards shall include, but not be limited to, the following worker protection provisions:

(1) SITE ANALYSIS.—Requirements for a formal hazard analysis of the site and development of a site specific plan for worker protection.

(2) TRAINING.—Requirements for contractors to provide initial and routine training of workers before such workers are permitted to engage in hazardous waste operations which would expose them to toxic substances.

(3) MEDICAL SURVEILLANCE.—A program of regular medical examination, monitoring, and surveillance of workers engaged in hazardous waste operations which would expose them to toxic substances.

(4) PROTECTIVE EQUIPMENT.—Requirements for appropriate personal protective equipment, clothing, and respirators for work in hazardous waste operations.

(5) ENGINEERING CONTROLS.—Requirements for engineering controls concerning the use of equipment and exposure of workers engaged in hazardous waste operations.

(6) MAXIMUM EXPOSURE LIMITS.—Requirements for maximum exposure limitations for workers engaged in hazardous waste operations, including necessary monitoring and assessment procedures.

(7) INFORMATIONAL PROGRAM.—A program to inform workers engaged in hazardous waste operations of the nature and degree of toxic exposure likely as a result of such hazardous waste operations.

(8) HANDLING.—Requirements for the handling, transporting, labeling, and disposing of hazardous wastes.

(9) NEW TECHNOLOGY PROGRAM.—A program for the introduction of new equipment or technologies that will maintain worker protections.

(10) DECONTAMINATION PROCEDURES.—Procedures for decontamination.

(11) EMERGENCY RESPONSE.—Requirements for emergency response and protection of workers engaged in hazardous waste operations.

(c) SPECIFIC TRAINING STANDARDS.—

(1) OFFSITE TRAINING; FIELD EXPERIENCE.—The training standards issued under subsection (b)(2) shall require that general site workers such as equipment operators, general laborers, and other supervised personnel receive a minimum of 40 hours of initial instruction off the site, and a minimum of three days of actual field experience under the direct supervision of a trained, experienced supervisor, at the time of assignment. Workers who may be exposed to unique or special hazards shall be provided additional training.

(2) TRAINING OF SUPERVISORS.—Such training standards shall require that onsite management and supervisors directly responsible for the hazardous waste operations, such as foremen, receive the same training as general site workers set forth in paragraph (1) of this subsection and at least eight additional

hours of specialized training on managing hazardous waste operations.

(3) CERTIFICATION; ENFORCEMENT.—Such training standards shall contain provisions for certifying that general site workers and supervisors have received the specified training and shall prohibit any individual who has not received the specified training from engaging in hazardous waste operations covered by the standard.

(4) TRAINING OF EMERGENCY RESPONSE PERSONNEL.—Such training standards shall set forth requirements for the training of workers who are responsible for responding to hazardous emergency situations who may be exposed to toxic substances in carrying out their responsibilities.

(d) DEADLINE FOR INTERIM REGULATIONS.—The Secretary of Labor shall issue interim final rules under this section within 60 days after the date of the enactment of this section which shall provide no less protection under this section for workers employed by contractors and emergency response workers than the protections contained in the Environmental Protection Agency Manual (1981) "Health and Safety Requirements for Employees Engaged in Field Activities" and existing standards under the Occupational Safety and Health Act of 1970 found in subpart C of part 1926 of title 29 of the Code of Federal Regulations.

(e) GRANT PROGRAM.—

(1) GRANT PURPOSES.—Grants for the training and education of workers who are or may be engaged in activities related to hazardous waste removal or containment or emergency response may be made under this subsection.

(2) ADMINISTRATION.—Grants under this subsection shall be administered by the National Institute of Occupational Safety and Health.

(3) GRANT RECIPIENTS.—Grants shall be awarded to nonprofit organizations which demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be engaged in hazardous waste removal or containment or emergency response operations.

SEC. 129. INDIAN TRIBES.

(a) DEFINITION.—As used in this Act, the term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The term does not include any Alaska Native regional or village corporation.

(b) FUTURE MAINTENANCE AND COST-SHARING REQUIREMENTS.—The requirements of section 104(c)(3) of this Act for assurances regarding future maintenance and cost-sharing shall not apply to remedial action to be taken on any of the following:

(1) Land or water held by an Indian tribe.

(2) Land or water held by the United States in trust for Indians.

(3) Land or water held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation).

(4) Land or water within the borders of an Indian reservation.

In the case of remedial action to be taken on any such land or water, the Secretary of the Interior shall provide the assurance required by section 104(c)(3) regarding the availability of a hazardous waste disposal facility.

(c) CONTRACTS OR COOPERATIVE AGREEMENTS.—

(1) AUTHORITY.—If the Administrator determines that an Indian tribe has the capability to carry out any or all of the actions authorized in this section, the Administrator may, in his discretion, enter into a contract or cooperative agreement with such an Indian tribe to take such actions in accordance with criteria and priorities established pursuant to section 105(a)(8) and to be reimbursed for the reasonable response costs thereof from the Fund.

(2) ENFORCEMENT.—If the Administrator enters into a contract or cooperative agreement pursuant to this subsection, and the Indian tribe thereof fails to comply with any requirements of the contract, the Administrator may, after providing 60 days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the Indian tribe.

(d) NATURAL RESOURCES LIABILITY.—

(1) LIABILITY TO TRIBE.—Liability under section 107(a)(4)(C) shall be to the Indian tribe in the case of an injury to, destruction of, or loss of natural resources belonging to, managed by, controlled by, or appertaining to the tribe, or held in trust for the benefit of such tribe, or belonging to a member of the tribe if such resources are subject to a trust restriction on alienation.

(2) EXEMPTIONS.—No liability to an Indian tribe shall be imposed under section 107(a)(4)(C), where the party sought to be charged has demonstrated each of the following:

(A) The damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement or other comparable environmental analysis.

(B) A decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license. In the case of damages occurring pursuant to a Federal permit or license, this subparagraph applies only so long as the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe.

(3) RECOVERY.—The Secretary of the Interior, or the authorized representative of any Indian tribe, shall act on behalf of the public as trustee of natural resources described in paragraph (1) to recover for damages described in paragraph (2). Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the

appropriate agencies of the Indian tribe, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources. There shall be no recovery under the authority of section 107(a)(4)(C) where the damages complained of and the release of a hazardous substance from which such damages resulted have occurred wholly before the date of the enactment of this Act.

(e) DELEGATION.—The Administrator is authorized to delegate authority to obligate money in the Fund or to settle claims to officials of an Indian tribe operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d).

(f) APPLICATION OF OTHER PROVISIONS.—The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 116 (regarding health assessments and protection), and section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the national priority list).

SEC. 130. RELEASES ASSOCIATED WITH BRINE DISPOSAL.

(a) REVIEW.—The Administrator shall conduct a review of State programs to protect human health and the environment in States in which annular injection of brines associated with oil and gas production is permitted. The review shall only be conducted in the case of States in which there are more than 2500 active wells at which annular injection is used as of the date of enactment of this section.

(b) ENFORCEMENT.—

(1) DETERMINATION.—If the Administrator determines, on the basis of the review conducted under subsection (a), that any State subject to such review is not adequately enforcing a State program to assure that human health or the environment will not be endangered by releases into the environment associated with the annular injection or surface disposal of such brines, the Administrator shall after notice to the State take or order such enforcement or corrective action in such State as may be necessary to assure protection of human health or the environment from endangerment by releases into the environment associated with such injection or other disposal practices.

(2) CIVIL ACTION.—The Administrator may bring a civil action under this paragraph in the appropriate United States district court to require compliance with any enforcement or corrective action taken or ordered under paragraph (1) in any State referred to in subsection (a). The court may enter such judgment as protection of human health or the environment may require, including the imposition of a civil penalty not to exceed $5,000 for each day of violation of any enforcement or corrective action taken or ordered by the Administrator.

(c) DEADLINES.—The review required under subsection (a) shall be completed, and any enforcement or corrective action taken or ordered under subsection (b) commenced, no later than 18 months after the date of the enactment of this section.

(d) Definition.—For purposes of this section, the term "annular injection" means the reinjection of brines associated with the production of oil or gas between the production and surface casings of a conventional oil or gas producing well.

TITLE II—HAZARDOUS SUBSTANCE RESPONSE REVENUE ACT OF 1980

SEC. 201. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) Short Title.—This title may be cited as the "Hazardous Substance Response Revenue Act of 1980".

(b) Amendment of 1954 Code.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

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Subtitle B—Establishment of Hazardous Substance Response Trust Fund

SEC. 221. ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESPONSE TRUST FUND.

(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous [Substance Response Trust Fund"] *Substances Superfund"* (hereinafter in this subtitle referred to as the "Response Trust Fund"), consisting of such amounts as may be appropriated or transferred to such Trust Fund as provided in this section.

(b) Transfers to Response Trust Fund.—

(1) Amounts equivalent to certain taxes, etc.—There are hereby appropriated, out of any money in the Treasury not otherwise appropriated, to the Response Trust Fund amounts determined by the Secretary of the Treasury (hereinafter in this subtitle referred to as the "Secretary") to be equivalent to—

(A) the amounts received in the Treasury under section 4611 or 4661 of the Internal Revenue Code of 1954,

(B) the amounts recovered on behalf of the Response Trust Fund under this Act,

(C) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

(D) penalties assessed under title I of this Act, and

(E) punitive damages under section 107(c)(8) of this Act.

(2) Authorization for appropriations.—There is authorized to be appropriated to the Emergency Response Trust Fund for fiscal year—

(A) 1981, $44,000,000,
(B) 1982, $44,000,000,
(C) 1983, $44,000,000,
(D) 1984, $44,000,000, and

(E) 1985, $44,000,000, plus an amount equal to so much of the aggregate amount authorized to be appropriated under subparagraphs (A), (B), (C), and (D) as has not been appropriated before October 1, 1984.

(3) TRANSFER OF FUNDS.—There shall be transferred to the Response Trust Fund—

(A) one-half of the unobligated balance remaining before the date of the enactment of this Act under the Fund in section 311 of the Clean Water Act, and

(B) the amounts appropriated under section 504(b) of the Clean Water Act during any fiscal year.

[(c) EXPENDITURES FROM RESPONSE TRUST FUND.—

[(1) IN GENERAL.—Amounts in the Response Trust Fund shall be available in connection with releases or threats of releases of hazardous substances into the environment only for purposes of making expenditures which are described in section 111 (other than subsection (j) thereof) of this Act, as in effect on the date of the enactment of this Act, including—

[(A) response costs,

[(B) claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act,

[(C) claims for injury to, or destruction or loss of, natural resources, and

[(D) related costs described in section 111(c) of this Act.

[(2) LIMITATIONS ON EXPENDITURES.—At least 85 percent of the amounts appropriated to the Response Trust Fund under subsection (b)(1)(A) and (2) shall be reserved—

[(A) for the purposes specified in paragraphs (1), (2), and (4) of section 111(a) of this Act, and

[(B) for the repayment of advances made under section 223(c), other than advances subject to the limitation of section 223(c)(2)(C).]

(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Response Trust Fund shall be available for expenditure only as provided in section 111 of this Act.

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Subtitle C—Post-Closure Tax and Trust Fund

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[SEC. 232. POST-CLOSURE LIABILITY TRUST FUND.

[(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Post-closure Liability Trust Fund", consisting of such amounts as may be appropriated, credited, or transferred to such Trust Fund.

[(b) EXPENDITURES FROM POST-CLOSURE LIABILITY TRUST FUND.—Amounts in the Post-closure Liability Trust Fund shall be available only for the purposes described in sections 107(k) and 111(j) of this Act (as in effect on the date of the enactment of this Act).

[(c) ADMINISTRATIVE PROVISIONS.—The provisions of sections 222 and 223 of this Act shall apply with respect to the Trust Fund established under this section, except that the amount of any repayable advances outstanding at any one time shall not exceed $200,000,000.]

TITLE III—MISCELLANEOUS PROVISIONS

REPORTS AND STUDIES

SEC. 301. (a)(1) The [President] *Administrator* shall submit to the Congress, within four years after enactment of this Act, a comprehensive report on experience with the implementation of this Act, including, but not limited to—

(A) the extent to which the Act and Fund are effective in enabling Government to respond to and mitigate the effects of releases of hazardous substances;

(B) a summary of past receipts and disbursements from the Fund;

(C) a projection of any future funding needs remaining after the expiration of authority to collect taxes, and of the threat to public health, welfare, and the environment posed by the projected releases which create any such needs;

(D) the record and experience of the Fund in recovering Fund disbursements from liable parties;

(E) the record of State participation in the system of response, liability, and compensation established by this Act;

(F) the impact of the taxes imposed by title II of this Act on the Nation's balance of trade with other countries;

(G) an assessment of the feasibility and desirability of a schedule of taxes which would take into account one or more of the following: the likelihood of a release of a hazardous substance, the degree of hazard and risk of harm to public health, welfare, and the environment resulting from any such release, incentives to proper handling, recycling, incineration, and neutralization of hazardous wastes, and disincentives to improper or illegal handling or disposal of hazardous materials, administrative and reporting burdens on Government and industry, and the extent to which the tax burden falls on the substances and parties which create the problems addressed by this Act. In preparing the report, the [President] *Administrator* shall consult with appropriate Federal, State, and local agencies, affected industries and claimants, and such other interested parties as he may find useful. Based upon the analyses and consultation required by this subsection, the [President] *Administrator* shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of this Act, including but not limited to recommendations concerning authorization levels, taxes, State participation, liability and liability limits, and financial responsibility provisions for the Response Trust Fund and the Post-closure Liability Trust Fund;

(H) an exemption from or an increase in the substances or the amount of taxes imposed by section 4661 of the Internal Revenue Code of 1954 for copper, lead, and zinc oxide, and for feedstocks when used in the manufacture and production of fertilizers, based upon the expenditure experience of the Response Trust Fund;

(I) the economic impact of taxing coal-derived substances and recycled metals.

(2) The Administrator of the Environmental Protection Agency (in consultation with the Secretary of the Treasury) shall submit to the Congress (i) within four years after enactment of this Act, a report identifying additional wastes designated by rule as hazardous after the effective date of this Act and pursuant to section 3001 of the Solid Waste Disposal Act and recommendations on appropriate tax rates for such wastes for the Post-closure Liability Trust Fund. The report shall, in addition, recommend a tax rate, considering the quantity and potential danger to human health and the environment posed by the disposal of any wastes which the Administrator, pursuant to subsection 3001(b)(2)(B) and subsection 3001(b)(3)(A) of the Solid Waste Disposal Act of 1980, has determined should be subject to regulation under subtitle C of such Act, (ii) within three years after enactment of this Act, a report on the necessity for and the adequacy of the revenue raised, in relation to estimated future requirements, of the Post-closure Liability Trust Fund.

(b) The [President] *Administrator* shall conduct a study to determine (1) whether adequate private insurance protection is available on reasonable terms and conditions to the owners and operators of vessels and facilities subject to liability under section 107 of this Act, and (2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions. The [President] *Administrator* shall submit the results of his study, together with his recommendations, within two years of the date of enactment of this Act, and shall submit an interim report on his study within one year of the date of enactment of this Act.

(c)(1) The [President] *Administrator,* acting through Federal officials designated by the National Contingency Plan published under section 105 of this Act, shall study and, not later than [two years after the enactment of this Act,] *six months after the date of the enactment of the Superfund Amendments of 1985,* shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act.

(2) Such regulations shall specify (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(3) Such regulations shall be reviewed and revised as appropriate every two years.

(d) The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies and appropriate representatives of State and local governments and nongovernmental agencies, conduct a study and report to the Congress within two years of the date of enactment of this Act on the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. This study shall include—

(A) an assessment of current and projected treatment, storage, and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(B) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions, interstate or intrastate, or both, with similar hazardous waste management needs;

(C) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act and other applicable provisions of law;

(D) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities;

(E) documentation of the major reasons for public opposition to new hazardous waste management facilities; and

(F) an evaluation of the various options for overcoming obstacles to siting new facilities, including needed legislation for implementing the most suitable option or options.

(e)(1) In order to determine the adequacy of existing common law and statutory remedies in providing legal redress for harm to man and the environment caused by the release of hazardous substances into the environment, there shall be submitted to the Congress a study within twelve months of enactment of this Act.

(2) This study shall be conducted with the assistance of the American Bar Association, the American Law Institute, the Association of American Trial Lawyers, and the National Association of State Attorneys General with the President of each entity selecting three members from each organization to conduct the study. The study chairman and one reporter shall be elected from among the twelve members of the study group.

(3) As part of their review of the adequacy of existing common law and statutory remedies, the study group shall evaluate the following:

(A) the nature, adequacy, and availability of existing remedies under present law in compensating for harm to man from the release of hazardous substances;

(B) the nature of barriers to recovery (particularly with respect to burdens of going forward and of proof and relevancy) and the role such barriers play in the legal system;

(C) the scope of the evidentiary burdens placed on the plaintiff in proving harm from the release of hazardous substances, particularly in light of the scientific uncertainty over causation with respect to—

(i) carcinogens, mutagens, and teratogens, and

(ii) the human health effects of exposure to low doses of hazardous substances over long periods of time;

(D) the nature and adequacy of existing remedies under present law in providing compensation for damages to natural resources from the release of hazardous substances;

(E) the scope of liability under existing law and the consequences, particularly with respect to obtaining insurance, of any changes in such liability;

(F) barriers to recovery posed by existing statutes of limitations.

(4) The report shall be submitted to the Congress with appropriate recommendations. Such recommendations shall explicitly address—

(A) the need for revisions in existing statutory or common law, and

(B) whether such revisions should take the form of Federal statutes or the development of a model code which is recommended for adoption by the States.

(5) The Fund shall pay administrative expenses incurred for the study. No expenses shall be available to pay compensation, except expenses on a per diem basis for the one reporter, but in no case shall the total expenses of the study exceed $300,000.

(f) The President, acting through the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Administrator of the Occupational Safety and Health Administration, and the Director of the National Institute for Occupational Safety and Health shall study and, not later than two years after the enactment of this Act, shall modify the national contingency plan to provide for the protection of the health and safety of employees involved in response actions.

(g) INSURABILITY STUDY.—

(1) STUDY GROUP.—The Comptroller General of the United States shall appoint a study group to carry out a study under this subsection. The study group shall be comprised of the following:

(A) 1 representative of the Comptroller General and 2 representatives of the Administrator.

(B) 4 representatives of persons described in paragraph (2).

(C) 2 representatives of groups or organizations comprised generally of persons adversely affected by releases or threatened releases of hazardous substances.

(D) 3 representatives of property and casualty insurers.

(E) 1 representative of reinsurers.

The representative of the Comptroller General shall be the chairperson of the study group. One reporter shall be elected from among the members of the study group.

(2) STUDY.—The study group shall undertake a study to determine the insurability of the liability of the following:

(A) Persons who generate hazardous substances: liability for costs under this Act.

(B) Persons who own or operate facilities: liability for costs under this Act.

(C) Persons liable for harm to persons or property caused by the release of hazardous substances into the environment.

(3) ITEM EVALUATED.—As part of their study in accordance with this section, the study group shall evaluate, among other matters, the following:

(A) Current economic conditions in, and the future outlook for, the commercial market for insurance and reinsurance.

(B) Current trends in statutory and common law remedies.

(C) The impact of possible changes in traditional standards of liability, proof, evidence, and damages on existing statutory and common law remedies.

(D) The effect of the standard of liability and extent of persons upon whom it is imposed under this Act on the underwriting and pricing of insurance coverage.

(E) Current trends in judicial interpretation and construction of applicable insurance contracts.

(F) The frequency and severity of a representative sample of claims closed during the calendar year preceding the date of the enactment of this subsection.

(G) Other impediments to insurability.

(4) SUBMISSION.—A report on the results of the study shall be submitted to Congress with appropriate recommendations within 18 months after the date of the enactment of this subsection.

(h) OVERSIGHT AND REPORTING REQUIREMENTS.—

(1) CONGRESSIONAL OVERSIGHT.—The appropriate authorizing committees of Congress shall conduct oversight hearings not less often than annually to ensure that this Act is being implemented according to the purposes of this Act and congressional intent in enacting this Act.

(2) ANNUAL REPORT BY EPA.—The Administrator of the Environmental Protection Agency shall submit a report annually to the Committees on Public Works and Transportation and Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate on the progress achieved in implementing this Act. In addition, such report shall specifically include—

(A) a detailed description of each feasibility study carried out at a facility under title I of this Act;

(B) the status and estimated date of completion of each such study;

(C) notice of each such study which will not meet a previously published schedule for completion and the new estimated date for completion;

(D) an evaluation of newly developed feasible and achievable permanent treatment technologies; and

(E) progress made in reducing the number of facilities in the Interim Category on the National Priorities List.

EFFECTIVE DATES, SAVINGS PROVISION

SEC. 302. (a) Unless otherwise provided, all provisions of this Act shall be effective on the date of enactment of this Act.

(b) Any regulation issued pursuant to any provisions of section 311 of the Clean Water Act which is repealed or superseded by this Act and which is in effect on the date immediately preceding the effective date of this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(c) Any regulation—

(1) respecting financial responsibility,

(2) issued pursuant to any provision of law repealed or superseded by this Act, and

(3) in effect on the date immediately preceding the effective date of this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(d) Nothing in this Act shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to releases of hazardous substances or other pollutants or contaminants. The provisions of this Act shall not be considered, interpreted, or construed in any way as reflecting a determination, in part or whole, of policy regarding the inapplicability of strict liability, or strict liability doctrines, to activities relating to hazardous substances, pollutants, or contaminants or other such activities.

[EXPIRATION, SUNSET PROVISION

[SEC. 303. Unless reauthorized by the Congress, the authority to collect taxes conferred by this Act shall terminate on September 30, 1985, or when the sum of the amounts received in the Treasury under section 4611 and under 4661 of the Internal Revenue Code of 1954 total $1,380,000,000, whichever occurs first. The Secretary of the Treasury shall estimate when this level of $1,380,000,000 will be reached and shall by regulation, provide procedures for the termination of the tax authorized by this Act and imposed under sections 4611 and 4661 of the Internal Revenue Code of 1954.]

CONFORMING AMENDMENTS

SEC. 304. (a) Subsection (b) of section 504 of the Federal Water Pollution Control Act is hereby repealed.

(b) One-half of the unobligated balance remaining before the date of the enactment of this Act under subsection (k) of section 311 of the Federal Water Pollution Control Act and all sums appropriated under section 504(b) of the Federal Water Pollution Control Act shall be transferred to the Fund established under title II of this Act.

(c) In any case in which any provision of section 311 of the Federal Water Pollution Control Act is determined to be in conflict with any provisions of this Act, the provisions of this Act shall apply.

LEGISLATIVE VETO

Sec. 305. (a) Notwithstanding any other provision of law, simultaneously with promulgation or repromulgation of any rule or regulation under authority of title I of this Act, the head of the department, agency, or instrumentality promulgating such rule or regulation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b) of this section, the rule or regulation shall not become effective, if—

(1) within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule or regulation promulgated by the   dealing with the matter of   , which rule or regulation was transmitted to Congress on   .", the blank spaces therein being appropriately filled; or

(2) within sixty calendar days of continuous session of Congress after the date of promulgation, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within thirty calendar days of continuous session of Congress after such transmittal.

(b) If, at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a rule or regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation and neither House has adopted such a resolution, the rule or regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule or regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a) of this section.

(c) For purposes of subsections (a) and (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of thirty, sixty, and ninety calendar days of continuous session of Congress.

(d) Congressional inaction on, or rejection of, a resolution of disapproval shall not be deemed an expression of approval of such rule or regulation.

TRANSPORTATION

Sec. 306. (a) Each hazardous substance which is listed *and regulated* or designated as provided in section 101(14) of this Act shall, within ninety days after the date of enactment of this Act or at the time of such listing or designation, whichever is later, be listed *and regulated* as a hazardous material under the Hazardous Materials Transportation Act.

(b) A common or contract carrier shall be liable under other law in lieu of section 107 of this Act for damages or remedial action resulting from the release of a hazardous substance during the course of transportation which commenced prior to the effective date of the listing of such substance as a hazardous material under the Hazardous Materials Transportation Act, or for substances listed *and regulated* pursuant to subsection (a) of this section, prior to the effective date of such listing: *Provided, however,* That this subsection shall not apply where such a carrier can demonstrate that he did not have actual knowledge of the identity or nature of the substance released.

(c) Section 11901 of title 49, United States Code, is amended by—

(1) redesignating subsection (h) as subsection (i);

(2) by inserting "and subsection (h)" after "subsection (g)" in subsection (i)(2) as so redesignated by paragraph (1) of this subsection; and

(3) by inserting the following new subsection (h):

"(h) A person subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, or an officer, agent, or employee of that person, and who is required to comply with section 10921 of this title but does not so comply with respect to the transportation of hazardous wastes as defined by the Environmental Protection Agency pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Congress) shall, in any action brought by the Commission, be liable to the United States for a civil penalty not to exceed $20,000 for each violation."

ASSISTANT ADMINISTRATOR FOR SOLID WASTE

SEC. 307. (a) Section 2001 of the Solid Waste Disposal Act is amended by striking out "a Deputy Assistant" and inserting in lieu thereof "an Assistant".

(b) The Assistant Administrator of the Environmental Protection Agency appointed to head the Office of Solid Waste shall be in addition to the five Assistant Administrators of the Environmental Protection Agency provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970 and the additional Assistant Administrator provided by the Toxic Substances Control Act, shall be appointed by the President by and with the advice and consent of the Senate, and shall be compensated at the rate provided for Level IV of the Executive Schedule pay rates under section 5315 of title 5, United States Code.

(c) The amendment made by subsection (a) shall become effective ninety days after the date of the enactment of this Act.

SEPARABILITY

SEC. 308. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances and the remainder of this Act shall not be affected thereby.

SEC. 309. ACTIONS UNDER STATE LAW FOR DAMAGES FROM EXPOSURE TO HAZARDOUS SUBSTANCES.

(a) STATE STATUTES OF LIMITATIONS FOR HAZARDOUS SUBSTANCE CASES.—

(1) EXCEPTION TO STATE STATUTES.—In the case of any action brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility, if the applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the federally required commencement date, such period shall commence at the federally required commencement date in lieu of the date specified in such State statute.

(2) STATE LAW GENERALLY APPLICABLE.—Except as provided in paragraph (1), the statute of limitations established under State law shall apply in all actions brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility.

(3) ACTIONS UNDER SECTION 107.—Nothing in this section shall apply with respect to any cause of action brought under section 107 of this Act.

(b) DEFINITIONS.—As used in this section—

(1) TITLE I TERMS.—The terms used in this section shall have the same meaning as when used in title I of this Act.

(2) APPLICABLE LIMITATIONS PERIOD.—The term "applicable limitations period" means the period specified in a statute of limitations during which a civil action referred to in subsection (a)(1) may be brought.

(3) COMMENCEMENT DATE.—The term "commencement date" means the date specified in a statute of limitations as the beginning of the applicable limitations period.

(4) FEDERALLY REQUIRED COMMENCEMENT DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "federally required commencement date" means the date the plaintiff knew (or reasonably should have known) that the personal injury referred to in subsection (a)(1) was caused or contributed to by the hazardous substance or pollutant or contaminant concerned.

(B) SPECIAL RULES.—In the case of a minor or incompetent plaintiff, the term "federally required commencement date" means the later of the date referred to in subparagraph (A) or the following:

(i) In the case of a minor, the date on which the minor reaches the age of majority as determined by State law or has a legal representative appointed.

(ii) In the case of an incompetent individual, the date on which such individual becomes competent or has had a legal representative appointed.

SEC. 310. CITIZENS SUITS.

(a) AUTHORITY TO BRING CIVIL ACTIONS.—Except as provided in subsections (d) and (e) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who—

(A) is alleged to be in violation of any requirement which has become effective pursuant to this Act; or

(B) has contributed or is contributing to the release or threatened release of any hazardous substance from a hazardous waste disposal site, if such release or threatened release may present an imminent and substantial endangerment to public health or the environment; or

(2) against—

(A) the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator; or

(B) any other department, agency, or instrumentality of the United States where there is alleged a failure of such department, agency, or instrumentality to perform any act or duty under section 120 of this Act (relating to Federal facilities) which is not discretionary with such department, agency, or instrumentality.

For purposes of this subsection, the term "hazardous waste disposal site" means a site at which disposal of hazardous waste has occurred or is occurring.

(b) VENUE.—

(1) ACTIONS UNDER SUBSECTION (a)(1).—Any action under subsection (a)(1)(A) shall be brought in the district court for the district in which the alleged violation occurred. Any action under subsection (a)(1)(B) shall be brought in the district court for the district in which the release or threatened release occurred or is occurring.

(2) ACTIONS UNDER SUBSECTION (a)(2).—Any action brought under paragraph (2) of subsection (a) may be brought in the United States District Court for the District of Columbia.

(c) RELIEF.—The district court shall have jurisdiction in actions brought under subsection (a)(1)(A) to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a)(1)(B), to immediately restrain any person contributing to the endangerment referred to in subsection (a)(1)(B), to order such person to take such other action as may be necessary to protect human health and the environment, or both. The district court shall have jurisdiction in actions brought under subsection (a)(2) to order the Administrator or other department, agency, or instrumentality to perform the act or duty concerned.

(d) SUBSECTION (a)(1) ACTIONS.—

(1) NOTICE.—No action may be commenced under subsection (a)(1) of this section prior to 60 days after the plaintiff has given notice of the violation or release or threatened release—

(A) to the Administrator;

(B) to the State in which the alleged violation or release or threatened release occurs; and

(C) to any alleged violator or person who contributed or is contributing to the release or threatened release.

Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(2) ACTIONS UNDER PARAGRAPH (1)(A).—No action may be commenced under subsection (a)(1)(A) with respect to any violation referred to in such subsection if the Administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of such requirement.

(3) ACTIONS UNDER PARAGRAPH (1)(B); EPA ACTIVITY.—No action may be commenced under subsection (a)(1)(B) with respect to an endangerment if the Administrator—

(A) has commenced and is diligently (i) pursuing an administrative order or civil action, or (ii) prosecuting an action in court under section 106 of this Act, or under section 7003 of the Solid Waste Disposal Act, with respect to such endangerment;

(B) is actually engaging in a removal action under section 104 with respect to such endangerment;

(C) has incurred costs to initiate a remedial investigation and feasibility study under section 104(b) of this Act with respect to the facility and is diligently proceeding with a remedial action under this Act with respect to the facility; or

(D) has obtained a court order (including a consent decree) under section 106 of this Act or under section 7003 of the Solid Waste Disposal Act under which any responsible party is diligently conducting a remedial investigation and feasibility study, conducting a removal action, or proceeding with a remedial action with respect to such endangerment.

In the case of an administrative order referred to in subparagraph (A), actions under subsection (a)(1)(B) are prohibited only as to the scope and duration of such administrative order.

(4) ACTIONS UNDER SUBSECTION (a)(1)(B); STATE ACTIVITY.—No action may be commenced by any person other than the State under subsection (a)(1)(B) if the State—

(A) has commenced and is diligently prosecuting an action under subsection (a)(1)(B) with respect to such endangerment;

(B) is actually engaging in a removal action under section 104 with respect to such endangerment; or

(C) has incurred costs to initiate a remedial investigation and feasibility study under section 104(b) of this Act and is diligently proceeding with a remedial action under this Act.

(5) STANDING.—Only a person who has an interest which is or may be adversely affected may bring an action under subsection (a)(1)(B).

(e) SUBSECTION (a)(2) ACTIONS.—No action may be commenced under paragraph (2) of subsection (a) prior to the 60th day following

the date on which the plaintiff gives notice to the Administrator or other department, agency, or instrumentality that the plaintiff will commence such action. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(f) Costs.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) Other Rights.—Nothing in this Act shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any standard or requirement relating to hazardous substances or to seek any other relief (including relief against the Administrator or a State agency).

(h) Intervention.—In any action under this section, the United States, if not a party, may intervene as a matter of right.

(i) Federally Permitted Release.—It shall be a defense in an action under subsection (a)(1)(B) that the release referred to in subsection (a)(1)(B) was a federally permitted release. For purposes of this subsection the term "federally permitted release" has the meaning given by section 101(10), except that such term shall not include discharges from a point source which are identified in a permit application (but not in a permit) under section 402 of the Federal Water Pollution Control Act.

(j) Pesticides.—No action may be brought under this section with respect to any release or threatened release resulting from the normal application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this subsection shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law (including common law)—

(1) for damages, injury, or loss resulting from a release of any hazardous substance,

(2) for removal or remedial action, or

(3) for the costs of removal or remedial action for such hazardous substance.

(k) Definitions.—The terms used in this section shall have the same meanings as when used in title I.

TITLE IV—STATE AND LOCAL COORDINATION OF EMERGENCY RESPONSE; COMMUNITY RIGHT TO KNOW

SEC. 401. ESTABLISHMENT OF STATE COMMISSIONS AND LOCAL COMMITTEES.

(a) Establishment of State Emergency Response Commissions.—Not later than six months after the date of the enactment of this title, the Governor of each State shall appoint an emergency response commission. The Governor may designate as the emergency response commission one or more existing emergency response organizations. The emergency response commission of a State shall ap-

point local emergency response committees under subsection (b) and shall supervise and coordinate the activities of such committees. If the Governor of any State does not designate a State commission within such period, the Administrator shall operate as the State commission until the Governor makes such designation and may make the initial designations and appointments under subsection (b).

(b) ESTABLISHMENT OF LOCAL EMERGENCY RESPONSE COMMITTEES.—

(1) IN GENERAL.—Not later than six months after the date of the establishment of a State commission under subsection (a), the commission shall—

(A) designate political subdivisions or combinations of political subdivisions as emergency response districts for purposes of this title; and

(B) appoint a local emergency response committee for each emergency response district designated under subparagraph (A).

(2) INTERSTATE AGREEMENTS.—Pursuant to interstate agreements, political subdivisions in more than one State may be included in an emergency response district under paragraph (1)(A) and members of an emergency response committee may be designated under paragraph (1)(B) from each State.

(c) COMPOSITION OF LOCAL COMMITTEES.—A local emergency response committee shall include representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, hospital, and transportation personnel; community groups; and covered operators.

(d) OFFICERS; AD HOC COMMITTEES.—A local emergency response committee may elect such officers and spokesmen and appoint such ad hoc committees of interested citizens, and request such assistance of State and local officials, as it deems necessary to assist it in carrying out its duties.

(e) REVISIONS.—The emergency response commission of a State may revise its designations and appointments under subsection (b) with respect to any local emergency response committee as it deems appropriate.

SEC. 402. COMPREHENSIVE EMERGENCY RESPONSE PLANS.

(a) PLAN REQUIRED.—Not later than 24 months after the date of the enactment of this title, each local emergency response committee shall complete an emergency response plan designed to minimize the injury to human health and the environment which could result from any hazardous substance emergency arising out of activities carried out at any covered facility located in the emergency response district for which such committee is established. The plan shall be integrated with existing emergency response plans at the discretion of the committee. A covered operator shall submit to the local emergency response committee any information in addition to the information required under section 403 (other than information which may be withheld from disclosure under section 407), with respect to a covered facility that the committee may request for purposes of

completing such plan. The committee may revise such plan as necessary to protect human health and the environment.

(b) Plan Provisions.—Each plan required under this section shall include each of the following at a minimum:

(1) designation of one or more State or local officials whom the covered operator will notify in case of a hazardous substance emergency;

(2) designation of the names and emergency telephone numbers of personnel employed by the covered operator who should be contacted in case of a hazardous substance emergency;

(3) a description of measures which should be taken to mitigate and minimize the risks to human health and the environment posed by a hazardous substance emergency;

(4) a description of a system or method and procedures and communications systems (including alarm and warning systems) to notify members of the affected public of a hazardous substance emergency;

(5) a description of emergency equipment and facilities in the community, and at each facility in the community at which a substantial inventory of a hazardous substance is maintained, and an identification of the persons responsible for such equipment and facilities;

(6) emergency evacuation plans, as well as an evaluation of the adequacy of existing transportation facilities to accomplish an evacuation;

(7) a description of training programs and drill schedules to be used for purposes of emergency response planning and preparedness; and

(8) an evaluation of medical, police, health, and firefighting resources available in the event of a hazardous substance emergency and recommendations, if appropriate, concerning what additional resources should be developed by State or local governments.

(c) Review by the Governor.—After completion of a plan under subsection (a) for an emergency response district, the local emergency response committee shall submit a copy of such plan to the Governor of each State in which such district is located. The Governor or Governors shall review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response plans of other emergency response districts.

(d) Assistance.—Upon request of a local emergency response committee, the Administrator shall provide assistance in developing and implementing an emergency response plan.

SEC. 403. BASIC NOTIFICATION REQUIREMENTS.

(a) Submission of Material Safety Data Sheets.—

(1) Basic requirement.—The owner or operator of any facility at which any hazardous chemical is produced, used, or stored shall submit a material safety data sheet for each such chemical. The owner or operator shall submit such sheet to the Administrator, the appropriate local emergency response committee, and such local and State officials as may have been designated to receive such sheet by such committee.

(2) FURNISHING OF SHEETS TO OTHER OWNERS AND OPERATORS.—Each owner or operator of a facility who is required to submit a material safety data sheet for a hazardous chemical under paragraph (1) and who supplies such chemical to any other facility owner or operator shall furnish such sheet, and any updated sheet under paragraph (4), to such other facility owner or operator. The initial sheet shall be furnished before, or at the time of, the first shipment of such chemical to such other owner or operator after the date which is six months after the date of the enactment of this title. Any updated sheet shall be furnished before, or at the time of, the first shipment of such chemical to such other owner or operator after such sheet is updated.

(3) COVERAGE.—

(A) IN GENERAL.—Paragraph (1) of this subsection applies only to an owner or operator of a facility who—

(i) employs more than 10 employees, or

(ii) produces, uses, or stores more than 1,000 kilograms of a hazardous chemical in any calendar month.

Domestic workers or casual laborers employed at a place of residence shall not be treated as employees for purposes of this paragraph.

(B) RESEARCH LABORATORIES AND HOSPITALS.—The use of any chemical or mixture in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual shall not be treated as a use of such chemical for purposes of this subsection.

(C) CONSUMER USE.—The use of a hazardous chemical for personal, family, or household purposes shall not be treated as a use for purposes of this subsection.

(4) INITIAL SHEET AND UPDATING.—The initial material safety data sheet required under this subsection with respect to a hazardous chemical shall be provided before the later of—

(A) 12 months after the date of the enactment of this title; or

(B) three months after such chemical is first produced, used, or stored at a facility.

Within three months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical which was originally required to be disclosed on such sheet under this subsection, the sheet shall be revised.

(b) PREPARATION OF HAZARDOUS SUBSTANCE REPORTS.—

(1) BASIC REQUIREMENT.—The covered operator with respect to each covered facility shall prepare and submit to the appropriate local emergency response committee a hazardous substance report.

(2) CONTENTS OF REPORT.—A hazardous substance report shall contain the following information with respect to the covered facility:

(A) the type and approximate amounts of any covered hazardous substance to be found at the facility;

(B) a map showing the location at the facility of each such substance stored at the facility;

(C) potential routes of human exposure to each such substance;

(D) symptoms of such exposure;

(E) appropriate emergency and first aid procedures for spills, fires, explosions, and other releases involving such substance; and

(F) emergency telephone numbers for appropriate personnel of the covered operator of the facility.

(3) INITIAL REPORT AND UPDATING.—The initial report required under this subsection with respect to a covered facility shall be provided before the later of—

(A) 18 months after the date of the enactment of this title; or

(B) three months after a facility becomes a covered facility.

Within three months following discovery by a covered operator of significant new information concerning an aspect of a covered hazardous substance which was originally required to be disclosed on such report under this subsection, the report shall be revised.

(4) LIST OF COVERED HAZARDOUS SUBSTANCES.—

(A) IN GENERAL.—Not later than 12 months after the date of the enactment of this title, the Administrator shall publish a list of those hazardous substances and hazardous chemicals which the Administrator determines have characteristics of volatility, combustibility, reactivity, dispersability, or toxicity such that the release of the substance or chemical is likely to cause an imminent and substantial endangerment to the public health or the environment. The Administrator may revise such list from time to time.

(B) PETITION.—Any person and any local emergency response committee may petition the Administrator to designate a substance as a covered hazardous substance. Within six months after receipt of such a petition, the Administrator shall either designate such substance as a covered hazardous substance or publish a written explanation of the reasons for the determination that such substance is not a covered hazardous substance.

(C) DETERMINATION OF SIGNIFICANT AMOUNTS.—At the time a substance or chemical is listed as a covered hazardous substance under this paragraph, the Administrator shall also list the amount of such substance constituting a significant amount as determined for purposes of section 411(a)(1)(B).

(5) FORMAT OF REPORTS.—

(A) IN GENERAL.—The Administrator shall publish a uniform format for hazardous substance reports within three months after the date of the enactment of this title.

(B) USE OF MATERIAL SAFETY DATA SHEET.—A covered operator may meet the requirements of this subsection by submitting a material safety data sheet with respect to each covered hazardous substance, supplemented as necessary to contain the information required by this subsection.

(c) EXTREMELY TOXIC SUBSTANCE STATUS SHEETS.—

(1) Requirement.—The covered operator with respect to each covered facility at which an extremely toxic substance is to be found shall prepare and submit to the appropriate local emergency response committee an extremely toxic substance status sheet with respect to such facility not later than three months after filing the initial report under paragraph (1) of subsection (b) with respect to such facility and every three months thereafter. Such status sheet shall be based, to the maximum extent practicable, upon information derived from actual monitoring and quantitative analysis.

(2) Contents of status sheet.—An extremely toxic substance status sheet shall contain with respect to the covered facility the following information:

(A) a summary of each report required to be submitted to the Administrator or a State during the preceding three months—

(i) under section 102 of this Act of a release of a reportable quantity of an extremely toxic substance, or

(ii) under the Federal Water Pollution Control Act, the Clean Air Act, or the Solid Waste Disposal Act of a discharge into the environment of any hazardous substance in excess of the amount permitted to be discharged under a permit under such Act; and

(B) the total amount of emissions of each extremely toxic substance during the preceding three months into each of the following: the air, surface water, groundwater, land, and publicly owned treatment works.

(3) Availability of reports.—A covered operator required to file a status sheet under this subsection shall make available a copy of a report referred to in paragraph (2)(A) to any person who requests a copy of such report.

(4) List of extremely toxic substances.—Not later than 12 months after the date of the enactment of this title, the Administrator shall publish a list of extremely toxic substances. Extremely toxic substances shall be those covered hazardous substances which are so acutely toxic that the release of any amount warrants reporting under this subsection.

(d) Records.—Each owner or operator under subsection (a) and each covered operator under subsection (b) or (c) shall maintain records of the information filed in compliance with this section for a period of 30 years. The Administrator shall take such steps as may be necessary to assist such covered operators and owners and operators in complying with this section and to reduce unnecessary or burdensome paperwork.

(e) Telephone Inquiries.—For purposes of this section, the Administrator shall establish a toll-free telephone number, operating 24 hours per day, that is computer accessible, to respond to telephone inquiries concerning the information collected through the material safety data sheets and the extremely toxic substance status sheets.

(f) Exemptions.—

(1) Material safety data sheets.—The Administrator may exempt an owner or operator from the requirements of subsection (a) with respect to—

(A) any hazardous chemical or group of hazardous chemicals;

(B) any facility or group of facilities; and

(C) specific activities carried out by such owner or operator in a specific location.

(2) Hazardous substance reports.—The Administrator may exempt from the requirements of subsection (b) reporting with respect to—

(A) any covered hazardous substance or group of covered hazardous substances;

(B) any covered facility or group of covered facilities; and

(C) specific activities carried out by any covered operator in a specific location.

(3) Procedures.—An exemption may be granted under this subsection by the Administrator on his own motion or upon petition of any person. An exemption may be granted only after notice and opportunity for public comment. No exemption may be granted under paragraph (1)(C) or (2)(C) for specific activities carried out by any covered operator or owner or operator until notice and an opportunity for a hearing have been provided in the locality in which such activities are carried out.

(4) Standard for exemption.—An exemption may be granted under this subsection only if the Administrator finds that the covered hazardous substance or hazardous chemical, facility, or activity concerned does not present a reasonable likelihood of injury to human health or the environment.

SEC. 404. HAZARDOUS SUBSTANCE EMERGENCY NOTICE AND BULLETIN.

(a) Notification Requirement.—

(1) Immediate notice.—In addition to any other notice required by this Act, in the case of any hazardous substance emergency, the covered operator shall immediately notify (by telephone, by radio, or in person) the appropriate local emergency response committee and any State and local officials designated by such committee to receive such notice of the existence of the hazardous substance emergency.

(2) Emergency bulletin.—In the case of a hazardous substance emergency, the covered operator shall provide an emergency bulletin to such committee and officials as soon as practicable.

(b) Contents of Emergency Bulletin.—Each emergency bulletin under this section shall include a full description of the hazardous substance emergency so that appropriate health and safety measures can be taken. Such notification shall include at a minimum—

(1) except as provided in section 407, the chemical name or identity of the hazardous substance or substances involved in the emergency,

(2) the actions taken to respond to the emergency,

(3) the covered operator's best estimate of the scope of the emergency, including the operator's best estimate of the amount and duration of the release,

(4) any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice re-

garding medical attention necessary for exposed individuals, and

(5) recommendations for additional actions, if any, that are necessary.

SEC. 405. PUBLIC AVAILABILITY OF PLANS, DATA SHEETS, REPORTS, STATUS SHEETS, AND EMERGENCY BULLETINS.

(a) AVAILABILITY TO PUBLIC.—Each emergency response plan, material safety data sheet, hazardous substance report, extremely toxic substance status sheet, and emergency bulletin shall be made available to the general public during normal working hours at the location or locations designated by the appropriate local emergency response committee. Upon request by a covered operator, the appropriate local emergency response committee shall withhold from disclosure under this section the information required by section 403(b)(2)(B) to be contained in a hazardous substance report.

(b) NOTICE OF PUBLIC AVAILABILITY.—Each local emergency response committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, hazardous substance reports, and extremely toxic substance status sheets have been submitted under this section. The notice shall state that hazardous substance emergency bulletins may subsequently be issued. Such notice shall announce that members of the public who wish to review any such plan, report, sheet, or emergency bulletin may do so at the location designated by the local emergency response committee.

SEC. 406. PROVISION OF INFORMATION TO HEALTH PROFESSIONALS, DOCTORS, AND NURSES.

(a) DIAGNOSIS OR TREATMENT BY HEALTH PROFESSIONAL.—A covered operator and any facility owner or operator required to file a material safety data sheet under section 403(a), a report under section 403(b), or an extremely toxic substance status sheet under section 403(c) shall provide the specific chemical identity, if known, of a covered hazardous substance or a hazardous chemical or an extremely toxic substance to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written agreement of confidentiality under subsection (d). The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that—

(1) the information is needed for purposes of diagnosis or treatment of an individual;

(2) the individual or individuals being diagnosed or treated have been exposed to the substance concerned; and

(3) knowledge of the specific chemical identity of such substance will assist in diagnosis or treatment.

Following such a written request, the facility owner or operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a substance under section 407 when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(b) MEDICAL EMERGENCY.—*A covered operator and a facility owner or operator required to file a material safety data sheet under section 403(a), a report under section 403(b), or an extremely toxic substance status sheet under section 403(c) shall provide a copy of the sheet or report, including the specific chemical identity, if known, of a covered hazardous substance or a hazardous chemical, to any treating physician or nurse who requests such information if such physician or nurse determines that—*

(1) a medical emergency exists;

(2) the specific chemical identity of the covered hazardous substance or hazardous chemical is necessary for or will assist in emergency or first-aid diagnosis or treatment; and

(3) the individual or individuals being diagnosed or treated have been exposed to the substance or chemical concerned.

Immediately following such a request, the owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a substance from a material safety data sheet, a hazardous substance report, or an extremely toxic substance status sheet under section 407 when such information is a trade secret shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the facility owner or operator disclosing such information may require a written confidentiality statement in accordance with subsection (d) and a statement setting forth the items listed in paragraphs (1) through (3) as soon as circumstances permit.

(c) PREVENTIVE MEASURES BY STATE AND LOCAL HEALTH PROFESSIONALS.—

(1) PROVISION OF INFORMATION.—*A covered operator and a facility owner or operator required to file a material safety data sheet under section 403(a), a report under section 403(b), or an extremely toxic substance status sheet under section 403(c) shall provide the specific chemical identity, if known, of a covered hazardous substance or a hazardous chemical to any health professional (such as a physician, toxicologist, or epidemiologist)—*

(A) who is a State or local government employee or a person under contract with the State or local government, and

(B) who requests such information in writing and provides a written statement of need under this subsection and a written agreement of confidentiality under subsection (d).

(2) WRITTEN STATEMENT OF NEED.—*The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:*

(A) To assess the hazards of the substance or chemical to which persons living in a State or local community will be exposed.

(B) To conduct or assess sampling of the atmosphere to determine exposure levels of various population groups.

(C) To conduct periodic medical surveillance of exposed population groups.

(D) To provide medical treatment to exposed individuals or population groups.

(E) To conduct studies to determine the health effects of exposure.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the State or local health professional. The authority to withhold the specific chemical identity of a substance under section 407 when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(d) CONFIDENTIALITY AGREEMENT.—Any person obtaining information under subsection (a) or (c) shall, in accordance with such subsection (a) or (c), be required to agree in a written confidentiality agreement that he will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. The confidentiality agreement under this subsection may provide for appropriate legal remedies in the event of a breach of the agreement, including stipulations of a reasonable pre-estimate of likely damages. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing non-contractual remedies to the extent permitted by law.

SEC. 407. TRADE SECRETS.

(a) AUTHORITY TO WITHHOLD INFORMATION.—With regard to a hazardous chemical, any facility owner or operator filing a material safety data sheet under section 403(a), a hazardous substance report under section 403(b), or an extremely toxic substance status sheet under section 403(c) may withhold from such sheet or report the specific chemical identity, including the chemical name and other specific identification, as defined in regulations prescribed by the Administrator of the Environmental Protection Agency under subsection (b), if the claim that the information withheld is a trade secret can be supported by showing that—

(1) the facility owner or operator has not disclosed the information to any other person, other than a member of a local emergency response committee, an officer or employee of the United States or a State or local government, an employee of such facility owner or operator, or a person who is bound by a confidentiality agreement,

(2) the information is not required to be disclosed to the public under any other Federal or State law, and

(3) knowledge of the withheld information may give the facility owner or operator an opportunity to obtain an advantage over competitors who do not know or use such information.

(b) TRADE SECRET REGULATIONS.—

(1) IN GENERAL.—The Administrator shall prescribe trade secret regulations which are identical (except for provisions relating to the procedure for the review of petitions challenging trade secret claims, and any minor conforming changes the Administrator considers appropriate), consistent with subsection (a), to the provisions concerning trade secrets in the Occupation-

al Safety and Health Administration Hazard Communication Standard and any revisions of such trade secret provisions prescribed by the Secretary of Labor in accordance with the ruling of the United States Court of Appeals for the Third Circuit in United Steelworkers of America, AFL–CIO-CLC v. Thorne G. Auchter.

(2) PETITION FOR REVIEW.—The Administrator shall establish a procedure for any affected citizen to petition the Administrator to review a trade secret claim made by a facility owner or operator under this section. Any appropriate United States district court shall have jurisdiction to review a determination by the Administration under this section.

(3) TIMETABLE.—The Administrator shall prescribe the regulations under paragraph (1) as soon as practicable but not later than three months after the date of the enactment of this Act, and shall prescribe the regulations under paragraph (2) no later than four months after the date on which the regulations under paragraph (1) become final.

(c) EXCEPTION FOR INFORMATION PROVIDED TO HEALTH PROFESSIONALS.—Nothing in this section or regulations adopted pursuant to this section shall authorize any person to withhold information which is required to be provided to a health professional or a doctor or nurse in accordance with section 406.

SEC. 408. ENFORCEMENT.

(a) CIVIL PENALTIES.—Any person (other than a governmental entity)—

(1) who violates any requirement of section 403(b), 403(c), or 404 shall be liable to the United States for a civil penalty in an amount not to exceed $20,000 for each such violation; and

(2) who violates any requirement of section 403(a) or 406(b), and any person who fails to furnish information withheld under section 407(a) from a material safety data sheet when requested by the Administrator for purposes of carrying out a review under section 407(b), shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each such violation.

Each day such a violation continues shall, for purposes of this paragraph, constitute a separate violation.

(b) CRIMINAL PENALTIES.—Any person (other than a governmental entity) who knowingly or willfully violates any requirement of section 403 (a), (b), or (c) or of subsections (a)(1) and (a)(2) of section 404 shall, in addition to, or in lieu of, any civil penalty which may be imposed under subsection (a), be subject, upon conviction, to imprisonment for not more than three years, or to a fine determined under section 3623 (or section 3571, if applicable) of title 18, United States Code, or both.

SEC. 409. STATE AND LOCAL LAW.

(a) IN GENERAL.—Except as provided in subsection (b), nothing in this title shall be construed to limit the ability of any State or locality to require submission of information related to hazardous chemicals or to limit the authority of any State to preempt any local law relating to the submission of information related to hazardous chemicals.

(b) Effect on MSDS Requirements.—

(1) Any State or local law enacted after August 1, 1985, which requires the submission of a material safety data sheet from facility owners or operators shall require that the data sheet be identical in content and format to the data sheet required under section 403(a). In addition, a State or locality may require the submission of information which is supplemental to the information required on the data sheet, through additional sheets attached to the data sheet or such other means as the State or locality considers appropriate.

(2) Any State or local law—

(A) enacted after August 1, 1985, and

(B) which requires a facility owner or operator who supplies a hazardous chemical to any other facility owner or operator to furnish a material safety data sheet to such other facility owner or operator,

shall be identical to the requirements under section 403(a)(2).

SEC. 410. EXEMPTION.

This title shall not apply to the transportation, including the storage incident to such transportation, of any hazardous chemical or covered hazardous substance if such transportation is regulated under the Hazardous Materials Transportation Act, the Hazardous Liquid Pipeline Safety Act of 1979, or the Natural Gas Pipeline Safety Act of 1968.

SEC. 411. DEFINITIONS.

(a) Terms Used Only in This Title.—For purposes of this title—

(1) Covered facility.—The term "covered facility" means—

(A) a facility listed on the National Priority List or the Comprehensive Environmental Response, Compensation, and Liability Information System list under this Act;

(B) any facility (other than a facility described in subparagraph (A) or (C) of this paragraph) which contains a significant amount, as determined by the Administrator, of one or more covered hazardous substances and which is located on a single property or on contiguous or adjacent properties which are under the control of the same persons (or of any person which controls, is controlled by, or is under common control with such person); and

(C) a facility which has been issued a permit under section 3005 of the Solid Waste Disposal Act or has been granted interim status under section 3005(e) of such Act.

(2) Covered hazardous substance.—The term "covered hazardous substance" means a substance listed under section 403(b)(4).

(3) Covered operator.—The term "covered operator" means any person (including any department, agency, or instrumentality of the United States) who owns or operates a covered facility.

(4) Hazardous chemical.—The term "hazardous chemical" means any chemical for which a material safety data sheet is required to be submitted under section 1910.1200(g) of title 29 of the Code of Federal Regulations, except that such term does not include the following substances:

(A) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(B) Any manufactured item which contains a hazardous chemical present as a solid which does not result in exposure to the hazardous chemical under normal conditions of use.

(C) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(D) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) HAZARDOUS SUBSTANCE EMERGENCY.—The term "hazardous substance emergency" means an accidental or abnormal release of a covered hazardous substance from a covered facility which may present an imminent and substantial endangerment to the public health or the environment. For purposes of this paragraph—

(A) the term "abnormal release" means a release which is not a continuous release and which is in excess of the normal amounts associated with routine operations of the covered facility; and

(B) the term "accidental release" means a release which is not planned.

(6) MATERIAL SAFETY DATA SHEET.—The term "material safety data sheet" means the sheet required to be developed under section 1910.1200(g) of title 29 of the Code of Federal Regulations, as that section may be amended from time to time.

(b) TERMS DEFINED IN TITLE I.—Terms used in this title which are defined for purposes of title I shall have the meanings given by title I.

TITLE V—POLLUTION INSURANCE

SEC. 501. DEFINITIONS.

As used in this title—

(1) INSURANCE.—The term "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law.

(2) POLLUTION LIABILITY.—The term "pollution liability" means liability for injuries arising from the release of hazardous substances or pollutants or contaminants.

(3) RISK RETENTION GROUP.—The term "risk retention group" means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State—

(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State; and

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

(4) PURCHASING GROUP.—The term "purchasing group" means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

(5) STATE.—The term "State" means any State of the United States and the District of Columbia.

SEC. 502. STATE LAWS.

Nothing in this title shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. The definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this title, including recognition or qualification of risk retention groups or purchasing groups.

SEC. 503. RISK RETENTION GROUPS.

(a) EXEMPTION.—Except as provided in this section, a risk retention group shall be exempt from the following:

(1) A State law, rule, or order which makes unlawful, or regulates, directly or indirectly, the operation of a risk retention group.

(2) A State law, rule, or order which requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong.

(3) A State law, rule, or order which requires any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in the State.

(4) A State law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

(b) EXCEPTIONS.—

(1) STATE LAWS GENERALLY APPLICABLE.—Nothing in subsection (a) shall be construed to affect the applicability of State laws generally applicable to persons or corporations. The State in which a risk retention group is chartered may regulate the formation and operation of the group.

(2) STATE REGULATIONS NOT SUBJECT TO EXEMPTION.—Subsection (a) shall not apply to any State law which requires a risk retention group to do any of the following:

(A) Comply with the unfair claim settlement practices law of the State.

(B) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State.

(C) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of

pollution liability insurance losses and expenses incurred on policies written through such mechanism.

(D) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses.

(E) Register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process.

(F) Furnish, upon request, such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction.

(G) Submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

(i) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

(ii) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group.

(H) Comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (G).

(c) APPLICATION OF EXEMPTIONS.—The exemptions specified in subsection (a) apply to—

(1) pollution liability insurance coverage provided by a risk retention group for—

(A) such group; or

(B) any person who is a member of such group;

(2) the sale of pollution liability insurance coverage for a risk retention group; and

(3) the provision of insurance related services or management services for a risk retention group or any member of such a group.

(d) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

SEC. 504. PURCHASING GROUPS.

(a) EXEMPTION.—Except as provided in this section, a purchasing group is exempt from the following:

(1) A State law, rule, or order which prohibits the establishment of a purchasing group.

(2) A State law, rule, or order which makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and expense experience, not afforded to other

persons with respect to rates, policy forms, coverages, or other matters.

(3) A State law, rule, or order which prohibits a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection.

(4) A State law, rule, or order which prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

(5) A State law, rule, or order which requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form.

(6) A State law, rule, or order which requires that a certain percentage of a purchasing group must obtain insurance on a group basis.

(7) A State law, rule, or order which requires that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State.

(8) A State law, rule, or order which otherwise discriminate against a purchasing group or any of its members.

(b) APPLICATION OF EXEMPTIONS.—The exemptions specified in subsection (a) apply to the following:

(1) Pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to:

(A) a purchasing group; or

(B) any person who is a member of a purchasing group.

(2) The sale of any one of the following to a purchasing group or a member of the group—

(A) Pollution liability insurance and comprehensive general liability coverage

(B) Insurance related services.

(C) Management services.

(c) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

SEC. 505. APPLICABILITY OF SECURITIES LAWS.

(a) OWNERSHIP INTERESTS.—The ownership interests of members of a risk retention group shall be considered to be—

(1) exempted securities for purposes of section 5 of the Securities Act of 1933 and for purposes of section 12 of the Securities Exchange Act of 1934; and

(2) securities for purposes of the provisions of section 17 of the Securities Act of 1933 and the provisions of section 10 of the Securities Exchange Act of 1934.

(b) INVESTMENT COMPANY ACT.—A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(c) BLUE SKY LAW.—The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

SOLID WASTE DISPOSAL ACT

* * * * * * *

Subtitle I—Regulation of Underground Storage Tanks

DEFINITIONS AND EXEMPTIONS

SEC. 9001. For the purposes of this subtitle—

(1) The term "underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any—

(A) farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes,

(B) tank used for storing heating oil for consumptive use on the premises where stored,

(C) septic tank,

(D) pipeline facility (including gathering lines) regulated under—

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.),

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or

(iii) which is an intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in clause (i) or (ii) of this subparagraph,

(E) surface impoundment, pit, pond, or lagoon,

(F) storm water or waste water collection system,

(G) flow-through process tank,

(H) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations, or

(I) storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" shall not include any pipes connected to any tank which is described in subparagraphs (A) through (I).

(2) The term "regulated substance" means—

(A) any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under subtitle C), and

(B) petroleum[, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute)].

(3) The term "owner" means—

(A) in the case of an underground storage tank in use on the date of enactment of the Hazardous and Solid Waste Amendments of 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated sustances, and

(B) in the case of any underground storage tank in use before the date of enactment of the Hazardous and Solid Waste Amendments of 1984, but no longer in use on the date of enactment of such Amendments, any person who owned such tank immediately before the discontinuation of its use.

(4) The term "operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

(5) The term "release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water or subsurface soils.

(6) The term "person" has the same meaning as provided in section 1004(15), except that such term includes a consortium, a joint venture, and a commercial entity, and the United States Government.

(7) The term "nonoperational storage tank" means any underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after the date of the enactment of the Hazardous and Solid Waste Amendments of 1984.

(8) The term "petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

* * * * * * *

RELEASE DETECTION, PREVENTION, AND CORRECTION REGULATIONS

SEC. 9003. (a) REGULATIONS.—The Administrator, after notice and opportunity for public comment, and at least three months before the effective dates specified in subsection (f), shall promulgate release detection, prevention, and correction regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment.

(b) DISTINCTIONS IN REGULATIONS.—In promulgating regulations under this section, the Administrator may distinguish between types, classes, and ages of underground storage tanks. In making such distinctions, the Administrator may take into consideration factors, including, but not limited to: location of the tanks, soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the technical capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the tank is fabricated.

(c) Requirements.—The regulations promulgated pursuant to this section shall include, but need not be limited to, the following requirements respecting all underground storage tanks—

(1) requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing or comparable system;

(3) requirements for reporting of releases and corrective action taken in response to a release from an underground storage tank;

(4) requirements for taking corrective action in response to a release from an underground storage tank; and

(5) requirements for the closure of tanks to prevent future releases of regulated substances into the environment.

(d) Financial Responsibility.—(1) As he deems necessary or desirable, the Administrator shall promulgate regulations containing requirements for maintaining evidence of financial responsibility as he deems necessary and desirable for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.

(2) Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, [or] qualification as a self-insurer[.] *or any other method satisfactory to the Administrator.* In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this subtitle.

(3) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any State court of the Federal Courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(4) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of

financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.

(5) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

(e) NEW TANK PERFORMANCE STANDARDS.—The Administrator shall, not later than three months prior to the effective date specified in subsection (f), issue performance standards for underground storage tanks brought into use on or after the effective date of such standards. The performance standards for new underground storage tanks shall include, but need not be limited to, design, construction, installation, release detection, and compatibility standards.

(f) EFFECTIVE DATES.—(1) Regulations issued pursuant to subsection (c) and (d) of this section, and standards issued pursuant to subsection (e) of this section, for underground storage tanks containing regulated substances defined in section 9001(2)(B) (petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure) shall be effective not later than thirty months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984.

(2) Standards issued pursuant to subsection (e) of this section (entitled "New Tank Performance Standards") for underground storage tanks containing regulated substances defined in section 9001(2)(A) shall be effective not later than thirty-six months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984.

(3) Regulations issued pursuant to subsection (c) of this section (entitled "Requirements") and standards issued pursuant to subsection (d) of this section (entitled "Financial Responsibility") for underground storage tanks containing regulated substances defined in section 9001(2)(A) shall be effective not later than forty-eight months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984.

(g) INTERIM PROHIBITION.—(1) Until the effective date of the standards promulgated by the Administrator under subsection (e) and after one hundred and eighty days after the date of the enactment of the Hazardous and Solid Waste Amendments of 1984, no person may install an underground storage tank for the purpose of storing regulated substances unless such tank (whether of single or double wall construction)—

(A) will prevent releases due to corrosion or structural failure for the operational life of the tank;

(B) is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(C) the material used in the construction or lining of the tank is compatible with the substance to be stored.

(2) Notwithstanding paragraph (1), if soil tests conducted in accordance with ASTM Standard G57-78, or another standard approved by the Administrator, show that soil resistivity in an installation location is 12,000 ohm/cm or more (unless a more stringent standard is prescribed by the Administrator by rule), a storage tank without corrosion protection may be installed in that location during the period referred to in paragraph (1).

(h) STATE INVENTORIES.—Each State shall make an inventory of all underground storage tanks in such State containing petroleum, and those of such tanks from which there is a known or threatened release of petroleum. In making such inventory, the State shall utilize the notification procedures and forms developed pursuant to section 9002 of this Act. Each State shall submit its inventory to the Administrator not later than six months after the date of the enactment of this subsection.

(i) EPA RESPONSE PROGRAM FOR PETROLEUM.—

(1) BEFORE (c)(4) REGULATIONS.—Before the effective date of corrective action regulations under subsection (c)(4), the Administrator is authorized to—

(A) undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the Administrator, to protect human health and the environment; or

(B) require the owner or operator of the underground storage tank to undertake such corrective action with respect to any such release unless the Administrator determines that such action will not be carried out properly by such owner or operator.

The corrective action undertaken or required under this paragraph shall be such as may be necessary to protect human health and the environment. In undertaking or requiring such corrective action, the Administrator shall take into account the distinctions referred to in subsection (b). The Administrator shall use funds in the Petroleum Release Response Account of the Hazardous Substances Superfund for payment of costs incurred for corrective action under subparagraph (A). The Administrator shall give priority in undertaking such actions under subparagraph (A) to cases where the Administrator cannot identify a solvent owner or operator of the tank who will undertake the action properly.

(2) AFTER (c)(4) REGULATIONS.—Following the effective date of regulations under subsection (c)(4), all actions of the Administrator (or ordered by the Administrator) described in paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date, the Administrator may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if such action is necessary, in the judgment of the Admin-

istrator, to protect human health and the environment and one or more of the following situations exists:

(A) No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is—

(i) an owner or operator of the tank concerned,

(ii) subject to such corrective action regulations, and

(iii) capable of carrying out such corrective action properly.

(B) A situation exists which requires prompt action by the Administrator under this paragraph to protect human health and the environment.

(C) The owner or operator of the tank has failed or refused to comply with an order of the Administrator under section 9006 to comply with the corrective action regulations.

(3) PRIORITY OF CORRECTIVE ACTIONS.—The Administrator shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment.

(4) CORRECTIVE ACTION ORDERS.—

(A) AUTHORITY.—The Administrator is authorized to issue orders under section 9006 to the owner or operator of an underground storage tank to carry out subparagraph (B) of paragraph (1) or regulations issued under subsection (c)(4).

(B) OTHER PERSONS SUBJECT TO ORDERS.—Orders under this paragraph may also be issued to any other person who has assumed financial responsibility for the tank under subsection (j)(2)(A). Orders under this subsection may not be issued to any other person. Any person, other than an owner or operator, who has accepted such financial responsibility shall be subject to corrective action orders under this subsection only in accordance with the terms of his financial responsibility agreement.

(5) ALLOWABLE CORRECTIVE ACTIONS.—The corrective actions undertaken by the Administrator under paragraph (1) or (2) may include temporary or permanent relocation of residents and alternative household water supplies. In connection with the performance of any corrective action under paragraph (1) or (2), the Administrator may also determine the health effects of the release concerned.

(6) RECOVERY OF COSTS.—

(A) IN GENERAL.—Whenever costs have been incurred by the Administrator, or by a State pursuant to paragraph (7), for undertaking corrective action with respect to the release of petroleum from an underground storage tank, the owner and operator of such tank shall be liable to the Administrator or the State for such costs. The liability under this paragraph shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act.

(B) INTERIM LIMIT ON LIABILITY.—

(i) INITIAL CORRECTIVE ACTION.—Except as provided in clause (ii) of this subparagraph and subparagraph (C) and until a determination is made under subparagraph (D), the maximum liability under this paragraph for each corrective action undertaken at a facility at which a release of petroleum from an underground storage tank occurs shall be—

(I) $1,000,000 in the case of an operator who is not an owner and who operates seven or fewer tanks containing petroleum at such facility;

(II) $3,000,000 in the case of an owner who owns seven or fewer tanks containing petroleum at such facility; and

(III) $5,000,000 in the case of an owner or operator who owns or operates more than seven such tanks at such facility.

(ii) INCREASED LIMITS.—Except as provided in subparagraph (C) and until a determination is made under subparagraph (D), the maximum liability under this paragraph for each corrective action undertaken at a facility at which a release of petroleum from an underground storage tank occurs shall be—

(I) $10,000,000 in the case of an owner or operator whose gross assets are more than $1,000,000,000 but not more than $5,000,000,000;

(II) $25,000,000 in the case of an owner or operator whose gross assets are more than $5,000,000,000 but not more than $10,000,000,000; and

(III) $50,000,000 in the case of an owner or operator whose gross assets are more than $10,000,000,000.

(iii) ADDITIONAL CORRECTIVE ACTION.—Additional corrective action which is required to respond to a release of petroleum from an underground storage tank which occurs after completion of corrective action in response to an earlier release from such tank shall be treated as a separate corrective action for purposes of clauses (i) and (ii) of this subparagraph.

(iv) APPLICATION.—The limitation on liability under this subparagraph shall apply only with respect to liability under this paragraph for costs incurred by the Administrator or a State for undertaking corrective action with respect to the release of petroleum from an underground storage tank. Such limitation shall not affect the liability of any person under any other authority of law for any other costs or damages.

(C) LIMITATIONS INAPPLICABLE.—The limitations under subparagraph (B) shall not apply if—

(i) the release or threat of release was the result of willful misconduct or gross negligence within the privity or knowledge of such person; or

(ii) the person fails or refuses to provide all reasonable cooperation and assistance requested by a responsi-

ble public official in connection with corrective action activities under this Act.

(D) PERMANENT REGULATIONS.—The Administrator may, by regulation, establish classes or categories of underground storage tanks and establish lower limits on liability than the limits prescribed by subparagraph (B) for such classes or categories, if the Administrator determines it appropriate on the basis of the following factors:

(i) the size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks;

(ii) the likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category;

(iii) the economic impact of the limits on owners and operators of each such class, particularly relating to the small business segment of the petroleum marketing industry;

(iv) the results of studies and actions undertaken in accordance with subsection (g); and

(v) such other factors as the Administrator deems pertinent.

(E) EFFECT ON LIABILITY.—

(i) NO TRANSFERS OF LIABILITY.—No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this subsection, to any other person the liability imposed under this subsection. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(ii) NO BAR TO CAUSE OF ACTION.—Nothing in this subsection, including the provisions of clause (i) of this subparagraph, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(F) FACILITY.—For purposes of this paragraph, the term "facility" means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owner or operator and located on a single parcel of property (or on any contiguous or adjacent property).

(7) STATE AUTHORITIES.—Whenever a State has primary enforcement responsibility under section 9004, the State may submit to the Administrator a proposal to exercise the authorities of the Administrator under paragraphs (1), (2), and (6) of this subsection. If the Administrator determines that such State has demonstrated the ability to exercise and enforce such authorities in a manner substantially equivalent to the Federal

program under this subsection, the Administrator may delegate such authorities to the State. For purposes of funding corrective actions undertaken by a State pursuant to such delegated authorities, the Administrator may make such grants to the State from the Petroleum Release Account of the Hazardous Substances Superfund as the Administrator deems necessary to further the objectives of this subsection. Such grants shall be apportioned among the States applying for grants as follows:

(A) 50 percent on the basis of the number of underground storage tanks containing petroleum which are located in each such State, and

(B) 50 percent on the basis of the number of such tanks located in each such State from which there is a known or threatened release of petroleum.

Determinations under subparagraphs (A) and (B) shall be based on information provided by the States in the surveys required under subsection (h).

(8) INVESTIGATIONS, ETC.—The Administrator may undertake investigations, monitoring, surveys, testing, and other information gathering to the extent necessary or appropriate to identify the existence and extent of any release or threatened release of petroleum from an underground storage tank, the source of the petroleum involved, and the extent of danger to human health and the environment. In addition, the Administrator may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he deems necessary or appropriate to plan and direct corrective actions, to recover the costs thereof, and to enforce the provisions of this subsection.

(9) TECHNICAL ASSISTANCE.—Where a State has been delegated authority under paragraph (7), the Administrator is authorized to provide technical and legal assistance in the administration and enforcement of any contract or subcontract in connection with corrective actions assisted under this subsection and to intervene in any civil action involving the enforcement of such contract or subcontract.

(10) ACCESS TO INFORMATION.—For purposes of assisting in determining the need for response to a release under this section or enforcing the provisions of this section, any person who stores, treats, or disposes of, or, where necessary to ascertain facts not available at the facility where petroleum is located, who produces, transports, or otherwise handles or has handled petroleum shall, upon request of any officer, employee, or representative of a State, where appropriate furnish information relating to such petroleum and permit such person at all reasonable times to have access to, and to copy, all records relating to such petroleum. For the purposes specified in the preceding sentence, such officers, employees, or representatives are authorized—

(A) to enter at reasonable times any establishment or other place where such petroleum is or has been produced, stored, treated, or disposed of or transported from;

(B) to inspect and obtain samples from any person of any such petroleum and samples of any containers or labeling for such petroleum.

Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or person in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume of weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or person in charge.

(11) AVAILABILITY OF RECORDS.—

(A) IN GENERAL.—Any records, reports, or information obtained from any person under this subsection shall be available to the public.

(B) EXCEPTION.—Records, reports, or information, or any portion thereof, obtained from any person under this subsection shall be considered confidential if such person demonstrates to the satisfaction of the Administrator or the State (as the case may be) that it would be entitled to protection under section 1905 of title 18 of the United States Code if it were disclosed by an officer or employee of the United States. Any such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States or a State concerned with carrying out this subsection or disclosed when relevant in any proceeding under this Act.

(C) PENALTY.—Any person not subject to the provisions of section 1905 of title 18 of the United States Code who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment of not more than one year, or both.

(D) DESIGNATION OF CONFIDENTIAL INFORMATION.—In submitting data under this paragraph, a person required to provide such data may (i) designate the data which such person believes is entitled to protection under this paragraph, and (ii) submit such designated data separately from other data submitted under this subsection. A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe by regulation.

(E) PROVIDING INFORMATION TO CONGRESSIONAL COMMITTEES.—Notwithstanding any limitation contained in this paragraph or any other provision of law, all information reported to, or otherwise obtained by, the Administrator (or any representative of the Administrator) under this subsection shall be made available, upon written request of any duly authorized committee of Congress, to such committee.

(12) HEALTH AND SAFETY STANDARDS.—In awarding contracts to any person engaged in corrective actions, the Administrator, or the State in any case in which it has been delegated authority under paragraph (7), shall require compliance with Federal

health and safety standards established under section 301(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 by contractors and subcontractors as a condition of such contracts.

(13) EMERGENCY PROCUREMENT POWERS.—Notwithstanding any other provision of law, subject to the provisions of section 111 of such Act, the Administrator may authorize the use of such emergency procurement powers as he deems necessary to effect the purpose of this subsection. Upon determination that such procedures are necessary, the Administrator shall promulgate regulations prescribing the circumstances under which such authority shall be used and the procedures governing the use of such authority.

(14) DEFINITION OF OWNER.—As used in this subsection, the term "owner" does not include any person who, without participating in the management of an underground storage tank, holds indicia of ownership primarily to protect his security interest in the tank.

(j) INTERIM REGULATIONS.—

(1) CORRECTIVE ACTIONS.—The Administrator shall issue interim regulations under subsection (c)(4) for underground storage tanks containing petroleum not later than 12 months after the date of the enactment of this subsection.

(2) FINANCIAL RESPONSIBILITY.—

(A) IN GENERAL.—The Administrator shall issue interim regulations under subsection (d) for underground storage tanks containing petroleum. These regulations shall be issued not later than 12 months after the date of the enactment of this subsection. The regulations shall permit each owner or operator of an underground storage tank to assume financial responsibility for responding to any release or threatened release of petroleum from the tank. The regulations shall also permit other persons to voluntarily assume financial responsibility for any such tank or to provide financial responsibility to the tank owner or operator. Whenever any person, other than the tank owner or operator, agrees to assume or provide such financial responsibility he shall agree to be subject to corrective action and liability under subsection (i) in accordance with the terms of the financial responsibility agreement.

(B) EFFECTIVE PERIOD.—Interim regulations under subparagraph (A) shall continue in effect for an underground storage tank containing petroleum until the financial responsibility regulations under subsection (d) take effect for that tank.

(C) ENFORCEMENT.—Any person who knowingly omits material information or makes any false or misleading material statement or representation in any certificate or other documentation provided as a demonstration of compliance under this subsection shall, upon conviction, be subject to imprisonment for not to exceed two years or fined in accord-

ance with section 3623 (or 3572 if applicable) of title 18 of the United States Code.

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INTERNAL REVENUE CODE OF 1954

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Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 38—ENVIRONMENTAL TAXES

Subchapter A. Tax on petroleum.
Subchapter B. Tax on certain chemicals.
Subchapter C. Tax on hazardous wastes.]

Subchapter A—Tax on Petroleum

Sec. 4611. Imposition of tax.
Sec. 4612. Definitions and special rules.

SEC. 4611. IMPOSITION OF TAX.

(a) GENERAL RULE.—There is hereby imposed a tax of 0.79 cent a barrel on—

(1) crude oil received at a United States refinery, and

(2) petroleum products entered into the United States for consumption, use, or warehousing.

(b) TAX ON CERTAIN USES AND EXPORTATION.—

(1) IN GENERAL.—If—

(A) any domestic crude oil is used in or exported from the United States, and

(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax of 0.79 cent a barrel is hereby imposed on such crude oil.

(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

(c) PERSONS LIABLE FOR TAX.—

(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

(2) IMPORTED PETROLEUM PRODUCT.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, [1985,] *1990* except that if on September 30, [1983,] *1988,* or September 30, [1984] *1989*—

(1) the unobligated balance in the Hazardous Substance Response Trust Fund as of such date exceeds [$900,000,000,] *$4,900,000,000* and

(2) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that such unobligated balance will exceed [$500,000,000] *$2,700,000,000* on September 30 of the following year if no tax is imposed under section 4611 or 4661 during the calendar year following the date referred to above,

then no tax shall be imposed by this section during the first calendar year beginning after the date referred to in paragraph (1).

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[Subchapter B—Tax on Certain Chemicals

[Sec. 4661. Imposition of tax.
[Sec. 4662. Definitions and special rules.

[SEC. 4661. IMPOSITION OF TAX.

[(a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

[In the case of	The tax is the following amount per ton
Acetylene	$4.87
Benzene	4.87
Butane	4.87
Butylene	4.87
Butadiene	4.87
Ethylene	4.87
Methane	3.44
Naphthalene	4.87
Propylene	4.87
Toluene	4.87
Xylene	4.87
Ammonia	2.64
Antimony	4.45
Antimony trioxide	3.75
Arsenic	4.45
Arsenic trioxide	3.41
Barium sulfide	2.30
Bromine	4.45
Cadmium	4.45
Chlorine	2.70
Chromium	4.45
Chromite	1.52
Potassium dichromate	1.69
Sodium dichromate	1.87
Cobalt	4.45
Cupric sulfate	1.87
Cupric oxide	3.59
Cuprous oxide	3.97
Hydrochloric acid	0.29
Hydrogen fluoride	4.23
Lead oxide	4.14
Mercury	4.45
Nickel	4.45

In the case of:	The tax is the following amount per ton
Phosphorus	4.45
Stannous chloride	2.85
Stannic chloride	2.12
Zinc chloride	2.22
Zinc sulfate	190
Potassium hydroxide	0.22
Sodium hydroxide	0.28
Sulfuric acid	0.26
Nitric acid	0.24

[(c) Termination.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a).

[SEC. 4662. DEFINITIONS AND SPECIAL RULES.

[(a) Definitions.—For purposes of this subchapter—

[(1) Taxable chemical.—Except as provided in subsection (b), the term "taxable chemical" means any substance—

[(A) which is listed in the table under section 4661(b), and

[(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

[(2) United States.—The term "United States" has the meaning given such term by section 4612(a)(4).

[(3) Importer.—The term "importer" means the person entering the taxable chemical for consumption, use, or warehousing.

[(4) Ton.—The term "ton" means 2,000 pounds. In the case of any taxable chemical which is a gas, the term "ton" means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

[(5) Fractional part of ton.—In the case of a fraction of a ton the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

[(b) Exceptions; Other Special Rules.—For purposes of this subchapter—

[(1) Methane or butane used as a fuel.—Under regulations prescribed by the Secretary, methane or butane shall be treated as a taxable chemical only if it is used otherwise than as a fuel or in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel (and, for purposes of section 4661(a), the person so using it shall be treated as the manufacturer thereof).

[(2) Substances used in the production of fertilizer.—

[(A) In general.—In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia which is a qualified fertilizer substance, no tax shall be imposed under section 4661(a).

[(B) Qualified fertilizer substance.—For purposes of this section, the term "qualified fertilizer substance" means any substance—

[(i) used in a qualified fertilizer use by the manufacturer, producer, or importer, [(ii) sold for use by any purchaser in a qualified use, or

[(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fertilizer use.

[(C) QUALIFIED FERTILIZER USE.—The term "qualified fertilizer use" means any use in the manufacture or production of fertilizer or for direct application as a fertilizer.

[(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purpose of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

[(3) SULFURIC ACID PRODUCED AS A BYPRODUCT OF AIR POLLUTION CONTROL.—In the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment, no tax shall be imposed under section 4661.

[(4) SUBSTANCES DERIVED FROM COAL.—For purposes of this subchapter, the term "taxable chemical" shall not include any substance to the extent derived from coal.

[(5) SUBSTANCES USED IN THE PRODUCTION OF MOTOR FUEL, ETC.—

[(A) IN GENERAL.—In the case of any chemical described in subparagraph (D) which is a qualified fuel substance, no tax shall be imposed under section 4661(a).

[(B) QUALIFIED FUEL SUBSTANCE.—For purposes of this section, the term "qualified fuel substance" means any substance—

[(i) used in a qualified fuel use by the manufacturer, producer, or importer,

[(ii) sold for use by any purchaser in a qualified fuel use, or

[(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fuel use.

[(C) QUALIFIED FUEL USE.—For purposes of this subsection, the term "qualified fuel use" means—

[(i) any use in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, or

[(ii) any use as such a fuel.

[(D) CHEMICALS TO WHICH PARAGRAPH APPLIES.—For purposes of this subsection, the chemical described in this subparagraph are acetylene, benzene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene.

[(E) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

[(6) SUBSTANCE HAVING TRANSITORY PRESENCE DURING REFINING PROCESS, ETC.—

[(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any taxable chemical described in subparagraph (B) by reasson of the transitory presence of such chemical during any process of smelting, refining, or otherwise extracting any substance not subject to tax under section 4661(a).

[(B) CHEMICALS TO WHICH SUBPARAGRAPH (A) APPLIES.—The chemicals described in this subparagraph are—

[(i) barium sulfide, cupric sulfate, cupric oxide, cuprous oxide, lead oxide, zinc chloride, and zinc sulfate, and

[(ii) any solution or mixture containing any chemical described in clause (i).

[(C) REMOVAL TREATED AS USE.—Nothing in subparagraph (A) shall be construed to apply to any chemical which is removed from or ceases to be part of any smelting, refining, or other extraction process.

[(c) USE BY MANUFACTURER, ETC., CONSIDERED SALE.—Except as provided in subsection (b), if any person manufactures, produces, or imports a taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

[(d) REFUND OR CREDIT FOR CERTAIN USES.—

[(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—

[(A) a tax under section 4661 was paid with respect to any taxable chemical, and

[(B) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section,

then an amount equal to the tax so paid shall be allowed as a credit or refune (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which this paragraph applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance manufactured or produced.

[(2) USE AS FERTILIZER.—Under regulations prescribed by the Secretary, if—

[(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to make ammonia without regard to subsection (b)(2), and

[(B) any person uses such substance as a qualified fertilizer substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

[(3) USE AS QUALIFIED FUEL.—Under regulations prescribed by the Secretary, if—

[(A) a tax under section 4661 was paid with respect to any chemical described in subparagraph (D) of subsection (b)(5) without regard to subsection (b)(5), and

[(B) any person used such chemical as a qualified fuel substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(5) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

[(e) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4661.]

Subchapter B—Tax on Certain Chemicals

Sec. 4661. Imposition of tax.
Sec. 4662. Definitions and special rules.

SEC. 4661. IMPOSITION OF TAX.

(a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

(b) AMOUNT OF TAX.—The amount of tax imposed by subsection (a) shall be determined in accordance with the following table:

In the case of:	*The tax is the following amount per ton:*
Acetylene	*$4.87*
Benzene	*4.87*
Butane	*4.87*
Butylene	*4.87*
Butadiene	*4.87*
Ethylene	*4.87*
Methane	*3.44*
Naphthalene	*4.87*
Propylene	*4.87*
Toluene	*4.87*
Xylene	*4.87*
Ammonia	*2.64*
Antimony	*4.45*
Antimony trioxide	*3.75*
Arsenic	*4.45*
Arsenic trioxide	*3.41*
Barium sulfide	*2.30*
Bromine	*4.45*
Cadmium	*4.45*
Chlorine	*2.70*
Chromium	*4.45*
Chromite	*1.52*
Potassium dichromate	*1.69*
Sodium dichromate	*1.87*
Cobalt	*4.45*
Cupric sulfate	*1.87*
Cupric oxide	*3.59*
Cuprous oxide	*3.97*
Hydrochloric acid	*0.29*
Hydrogen fluoride	*4.23*
Lead oxide	*4.14*
Mercury	*4.45*
Nickel	*4.45*
Phosphorus	*4.45*

In the case of:	*The tax is the following amount per ton:*
Stannous chloride	*2.85*
Stannic chloride	*2.12*
Zinc chloride	*2.22*
Zinc sulfate	*1.90*
Potassium hydroxide	*0.22*
Sodium hydroxide	*0.28*
Sulfuric acid	*0.26*
Nitric acid	*0.24*

(c) TERMINATION.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a).

SEC. 4662. DEFINITIONS AND SPECIAL RULES.

(a) DEFINITIONS.—For purposes of this subchapter—

(1) TAXABLE CHEMICAL.—Except as provided in subsection (b), the term "taxable chemical" means any substance—

(A) which is listed in the table under section 4661(b), and

(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

(2) UNITED STATES.—The term "United States" has the meaning given such term by section 4612(a)(4).

(3) IMPORTER.—The term "importer" means the person entering the taxable chemical for consumption, use, or warehousing.

(4) TON.—The term "ton" means 2,000 pounds. In the case of any taxable chemical which is a gas, the term "ton" means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

(5) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

(b) EXCEPTIONS; OTHER SPECIAL RULES.—For purposes of this subchapter—

(1) METHANE OR BUTANE USED AS A FUEL.—Under regulations prescribed by the Secretary, methane or butane shall be treated as a taxable chemical only if it is used otherwise than as a fuel or in the manufacture, or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel (and, for purposes of section 4611(a), the person so using it shall be treated as the manufacturer thereof).

(2) SUBSTANCES USED IN THE PRODUCTION OF FERTILIZER.—

(A) IN GENERAL.—In the case of a nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia which is a qualified fertilizer substance, no tax shall be imposed under section 4661(a).

(B) QUALIFIED FERTILIZER SUBSTANCE.—For purposes of this section, the term "qualified fertilizer substance" means any substance—

(i) used in a qualified fertilizer use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified fertilizer use, or

(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fertilizer use.

(C) QUALIFIED FERTILIZER USE.—The term "qualified fertilizer use" means any use in the manufacture or production of fertilizer or for direct application as a fertilizer.

(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

(3) SULFURIC ACID PRODUCED AS A BYPRODUCT OF AIR POLLUTION CONTROL.—In the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment, no tax shall be imposed under section 4661.

(4) SUBSTANCES DERIVED FROM COAL.—For purposes of this subchapter, the term "taxable chemical" shall not include any substance to the extent derived from coal.

(5) SUBSTANCES USED IN THE PRODUCTION OF MOTOR FUEL, ETC.—

(A) IN GENERAL.—In the case of any chemical described in subparagraph (D) which is a qualified fuel substance, no tax shall be imposed under section 4661(a).

(B) QUALIFIED FUEL SUBSTANCE.—For purposes of this section, the term "qualified fuel substance" means any substance—

(i) used in a qualified fuel use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified fuel use, or

(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fuel use.

(C) QUALIFIED FUEL USE.—For purposes of this subsection, the term "qualified fuel use" means—

(i) any use in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, or

(ii) any use as such a fuel.

(D) CHEMICALS TO WHICH PARAGRAPH APPLIES.—For purposes of this subsection, the chemicals described in this subparagraph are acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene.

(E) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

(6) SUBSTANCE HAVING TRANSITORY PRESENCE DURING REFINING PROCESS, ETC.—

(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any taxable chemical described in subparagraph (B) by reason of the transitory presence of such chemical during any process of smelting, refining, or otherwise ex-

tracting any substance not subject to tax under section 4661(a).

(B) CHEMICALS TO WHICH SUBPARAGRAPH (A) APPLIES.—The chemicals described in this subparagraph are—

(i) barium sulfide, cupric sulfate, cupric oxide, cuprous oxide, lead oxide, zinc chloride, and zinc sulfate, and

(ii) any solution or mixture containing any chemical described in clause (i).

(C) REMOVAL TREATED AS USE.—Nothing in subparagraph (A) shall be construed to apply to any chemical which is removed from or ceases to be part of any smelting, refining, or other extraction process.

(7) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—

(A) IN GENERAL.—In the case of nitric acide, sulfuric acid, ammonia, or methane used to produce ammonia, which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term "qualified animal feed substance" means any substance—

(i) used in a qualified animal feed use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified animal feed use, or

(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

(C) QUALIFIED ANIMAL FEED USE.—The term "qualified animal feed use" means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

(c) USE BY MANUFACTURER, ETC., CONSIDERED SALE.—Except as provided in subsection (b), if any person manufactures, produces, or imports a taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

(d) REFUND OR CREDIT FOR CERTAIN USES.—

(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to any taxable chemical, and

(B) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such *section. In any case to which this paragraph applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance manufactured or produced.*

(2) USE AS FERTILIZER.—Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to make ammonia without regard to subsection (b)(2), and

(B) any person uses such substance as a qualified fertilizer substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(3) USE AS QUALIFIED FUEL.—Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to any chemical described in subparagraph (D) of subsection (b)(5) without regard to subsection (b)(5), and

(B) any person uses such chemical as a qualified fuel substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(5) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(4) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(7), and

(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(7) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(e) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4661.

Subchapter C—Tax on Hazardous Wastes

[Sec. 4681. Imposition of tax.
[Sec. 4682. Definitions and special rules.

[SEC. 4681. IMPOSITION OF TAX.

[(a) GENERAL RULE.—There is hereby imposed a tax on the receipt of hazardous waste at a qualified hazardous waste disposal facility.

[(b) Amount of Tax.—The amount of the tax imposed by subsection (a) shall be equal to $2.13 per dry weight ton of hazardous waste.

[SEC. 4682. DEFINITIONS AND SPECIAL RULES.

[(a) Definitions.—For purposes of this subchapter—

[(1) Hazardous waste.—The term "hazardous waste" means any waste—

[(A) having the characteristic identified under section 3001 of the Solid Waste Disposal Act, as in effect on the date of the enactment of this Act (other than waste the regulation of which under such Act has been suspended by Act of Congress on that date), or

[(B) subject to the reporting or recordkeeping requirements of sections 3002 and 3004 of such Act, as so in effect.

[(2) Qualified hazardous waste disposal facility.—The term "qualified hazardous waste disposal facility" means any facility which has received a permit or is accorded interim status under section 3005 of the Solid Waste Disposal Act.

[(b) Tax Imposed on Owner or Operator.—The tax imposed by section 4681 shall be imposed on the owner or operator of the qualified hazardous waste disposal facility.

[(c) Tax Not To Apply to Certain Wastes.—The tax imposed by section 4681 shall not apply to any hazardous waste which will not remain at the qualified hazardous waste disposal facility after the facility is closed.

[(d) Applicability of Section.—The tax imposed by section 4681 shall apply to the receipt of hazardous waste after September 30, 1983, except that if, as of September 30 of any subsequent calendar year, the unobligated balance of the Post-closure Liability Trust Fund exceeds $200,000,000, no tax shall be imposed under such section during the following calendar year.]

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SECTION 204 OF THE TRANS-ALASKA PIPELINE AUTHORIZATION ACT

LIABILITY

Sec. 204. (a)(1) * * *

* * * * * * *

(b) If any area *in the State of Alaska* within or without the right-of-way or permit area granted under this title is polluted by any activities *related to the trans-Alaska oil pipeline* conducted by or on behalf of the holder to whom such right-of-way or permit was granted and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder.

This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 401 of the Comprehensive Oil Pollution Liability and Compensation Act.

[(c)(1) Notwithstanding the provisions of any other law, if oil that has been transported through the trans-Alaska pipeline is loaded on a vessel at the terminal facilities of the pipeline, the owner and operator of the vessel (jointly and severally) and the Trans-Alaska Pipeline Liability Fund established by this subsection, shall be strictly liable without regard to fault in accordance with the provisions of this subsection for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as the result of discharges of oil from such vessel.

[(2) Strict liability shall not be imposed under this subsection if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency, Strict liability shall not be imposed under this subsection with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was casued by the negligence of such party.

[(3) Strict liability for all claims arising out of any one incident shall not exceed $100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first $14,000,000 of such claims that are allowed. Financial responsibility for $14,000,000 shall be demonstrated in accordance with the provisions of section 311(p) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(p)) before the oil is loaded. The Fund shall be liable for the balance of the claims that are allowed up to $1,000,000,000. If that total claims allowed exceed $100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or state law.

[(4) The Trans-Alaska Pipeline Liability Fund is hereby established as a non-profit corporate entity that may sue and be sued in its own name. The Fund shall be administered by the holders of the trans-Alaska pipeline right-of-way under regulations prescribed by the Secretary. The Fund shall be subject to an annual audit by the Comptroller General, and a copy of the audit shall be submitted to the Congress.

[(5) The operator of the pipeline shall collect from the owner of the oil at the time it is loaded on the vessel a fee of five cents per barrel. The collection shall cease when $100,000,000 has been accumulated in the Fund, and it shall be resumed when the accumulation in the Fund falls below $100,000,000.

[(6) The collections under paragraph (5) shall be delivered to the Fund. Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested prudently in income-producing securities approved by the Secretary. Income from such securities shall be added to the porincipal of the Fund.

[(7) The provisions of this subsection shall apply only to vessels engaged in transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States. Strict liability under this subsection shall cease when the oil has first been brought ashore at a port under the jurisdiction of the United States.

[(8) In any case where liability without regard to fault is imposed pursuant to this subsection and the damages involved were caused by the unseaworthiness of the vessel or by negligence, the owner and operator of the vessel, and the Fund, as the case may be, shall be subrogated under applicable State and Federal laws to the rights under said laws of any person entitled to recovery hereunder. If any subrogee brings an action based on unseaworthiness of the vessel or negligence of its owner or operator, it may recover from any affiliate of the owner or operator, if the respective owner or operator fails to satisfy any claims by the subrogee allowed under this paragraph.

[(9) This subsection shall not be interpreted to preempt the field of strict liability or to preclude any State from imposing additional requirements.

[(10) If the Fund is unable to satisfy a claim asserted and finally determined under this subsection, the Fund may borrow the money needed to satisfy the claim from any commercial credit source, at the lowest available rate of interest, subject to approval of the Secretary.

[(11) For purposes of this subsection only, the term "affiliate" includes—

[(A) Any person owned or effectively controlled by the vessel owner or operator; or

[(B) Any person that effectively controls or has the power effectively to control the vessel owner or operator by—

[(i) stock interest, or

[(ii) representation on a board of directors or similar body, or

[(iii) contract or other agreement with other stockholders, or

[(iv) otherwise; or

[(C) Any person which is under common ownership or control with the vessel owner or operator.

[(12) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.]

SECTION 17 OF THE INTERVENTION ON THE HIGH SEAS ACT

[SEC. 17. The revolving fund established under section 311(k) of the Federal Water Pollution Control Act shall be available to the Secretary for Federal actions and activities under section 5 of this Act.]

SEC. 17. The Marine Oil Pollution Compensation Fund established under subtitle B of the Comprehensive Oil Pollution Liability and Compensation Act shall be available to the Secretary for actions and activities relating to oil pollution (as defined in section 401 of that Act), or the substantial threat of oil pollution, taken under section 5 of this Act.

SECTION 311 OF THE FEDERAL WATER POLLUTION CONTROL ACT

OIL AND HAZARDOUS SUBSTANCE LIABILITY

SEC. 311. (a) For the purpose of this section, the term—

(1) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

* * * * * * *

(17) "Otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party**[**.**]**;

(18) "person in charge" means the individual immediately responsible for the operation of a vessel or facility.

(b)(1) * * *

* * * * * * *

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of his subsection, immediately notify the appropriate agency of the United States Government of such discharge. Any such person (A) in charge of a vessel from which oil or hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel from which oil or hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States at the time of the discharge, or (C) in charge of an onshore facility or an offshore facility, who fails to notify immediately such agency of such discharge shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person *or his employer* in any criminal case, except a prosecution for perjury or for giving a false statement.

(6)(A) Any owner, operator, **[**or**]** person in charge, *or employer of such person in charge* of any onshore facility or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. Any owner, operator, **[**or**]** person in charge, *or employer of such person in charge* of any vessel from which oil or hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, and any owner, operator, **[**or**]** person in charge, *or employer of such person in charge* of the vessel from which oil or hazardous substance is discharged in violation of paragraph (3)(ii) who is otherwise subject to the jurisdiction of the United States at the time of the discharge; shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. No penalty shall be assessed unless **[**the owner or operator] *whoever being* charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91), of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

(B) The Administrator, taking into account the gravity of the offense, and the standard of care manifested by the owner, operator, [or] person in charge, *or employer of such person in charge,* may commence a civil action against any such person subject to the penalty under subparagraph (A) of this paragraph to impose a penalty based on consideration of the size of the business of the owner or operator, the effect on the ability of the owner or operator to continue in business, the gravity of the violation, and the nature, extent, and degree of success of any efforts made by the owner, operator, or person in charge to minimize or mitigate the effects of such discharge. The amount of such penalty shall not exceed $50,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, [or] person in charge, *or employer of such person in charge,* such penalty shall not exceed $250,000. Each violation is a separate offense. Any action under this subparagraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty. No action may be commenced under this clause where a penalty has been assessed under clause (A) of this paragraph.

* * * * * * *

(c)(1) * * *

(2) Within sixty days after the effective date of this section, the President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances, pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to—

(A) * * *

* * * * * * *

(H) a system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed [from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal.] *in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred in such removal from the Marine Oil Pollution Compensation Fund.*

The President may, from time to time, as he deems advisable revise or otherwise amend the National Contingency Plan. After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

(d) Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil, or of a hazardous substance from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. [Any expense incurred under this subsection or under the Intervention on the High Seas Act (or the convention defined in section 2(3) thereof) shall be a cost incurred by the United States Government for the purposes of subsection (f) in the removal of oil or hazardous substance.]

* * * * * * *

(i)[(1)] In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Claims Court, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing clauses.

[(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act, or the Deepwater Port Act of 1974.

[(3) Any amount paid in accordance with a judgment of the United States Court of Claims pursuant to this section shall be paid from the funds established pursuant to subsection (k).]

* * * * * * *

[(k)(1) There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury such sums as may be necessary to maintain such fund at a level of $35,000,000 to carry out the provisions of subsections (c), (d), (i) and (l) of this section. Any other funds received by the United States under this section shall also be deposited in said fund for such purposes. All sums appropriated to or deposited in, said fund shall remain available until expended.

[(2) The Secretary of Transportation shall notify the Congress whenever the unobligated balance of the fund is less than $12,000,000, and shall include in such notification a recommendation for a supplemental appropriation relating to the sums that are needed to maintain the fund at the level provided in paragraph (1).]

(l) The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. [Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalities to carry out the provisions of subsections (c) and (i) of this section.] Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies and instrumentalities.

* * * * * *

[(p)(1) Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil or hazardous substances as cargo or fuel, using any port or place in the United States or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of, in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000), whichever is greater, to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator owns, operates, or charters more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

[(2) The provisions of paragraph (1) of this subsection shall be effective April 3, 1971, with respect to oil and one year after the date of enactment of this section with respect to hazardous substances. The President shall delegate the responsibility to carry out the provisions of this subsection to the appropriate agency within sixty days after the date of enactment of this section. Regulations necessary to implement this subsection shall be issued within six months after the date of enactment of this section.

[(3) Any claim for costs incurred by such vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility as required under this subsection. In the case of any action pursuant to this subsection such insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him if an action had been brought against him by the owner or operator.

[(4) Any owner or operator of a vessel subject to this subsection, who fails to comply with the provisions of this subsection or any regulation issued thereunder, shall be subject to a fine of not more than $10,000.

[(5) The Secretary of the Treasury may refuse the clearance required by section 4197 of the Revised Statutes of the United States, as amended (4 U.S.C. 91), to any vessel subject to this subsection, which does not have evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

[(6) The Secretary of the Department in which the Coast Guard is operated may (A) deny entry to any port or place in the United States or the navigable waters of the United States, to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection, which upon request, does not produce evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.]

* * * * * * *

(s) The Marine Oil Pollution Compensation Fund shall be available to carry out subsections (c), (d), (i), and (l) as those subsections relate to discharges of oil. Any amounts received by the United States under this section with respect to claims arising on or after the effective date of this subsection shall be deposited in the Marine Oil Pollution Compensation Fund.

DEEPWATER PORT ACT OF 1974

* * * * * * *

LICENSE FOR THE OWNERSHIP, CONSTRUCTION, AND OPERATION OF A DEEPWATER PORT

SEC. 4. (a) * * *

* * * * * * *

(c) The Secretary may issue a license in accordance with the provisions of this Act if—

(1) he determines that the applicant is financially responsible and will meet the requirements of section [18(l) of this Act;] *405 of the Comprehensive Oil Pollution Liability and Compensation Act;*

* * * * * * *

LIABILITY

SEC. 18. (a)(1) The discharge of oil into the marine environment from a vessel within any safety zone, from a vessel which has received oil from another vessel at a deepwater port, or from a deepwater port is prohibited.

(2) The owner or operator of a vessel or the license of a deepwater port from which oil is discharged in violation of this subsection shall be assessed a civil penalty of not more than $10,000 for each violation. No penalty shall be assessed unless the owner or operator or the licensee has been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. The Secretary of the Treasury shall withhold, at the request of the Secretary, the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91), of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to the Secretary.

[(b) Any individual in charge of a vessel or a deepwater port shall notify the Secretary as soon as he has knowledge of a discharge of oil. Any such individual who fails to notify the Secretary immediately of such discharge shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than 1 year, or both. Notification received pursuant to this subsection, or information obtained by the use of such notification, shall not be used against any such individual in any criminal case, except a prosection for prejury or for giving a false statement]

[(c)](*b*)(1) Whenever any oil is discharged from a vessel within any safety zone, from a vessel which has received oil from another vessel at a deepwater port, or from a deepwater port, the Secretary shall remove or arrange for the removal of such oil as soon as possible, unless he determines such removal will be done properly and expeditiously by the licensee of the deepwater port or the owner or operator of the vessel from which the discharge occurs.

(2) Removal of oil and actions to minimize damage from oil discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan for removal of oil and hazardous substances established pursuant to section 311(c)(2) of the Federal Water Pollutant Control Act, as amended.

(3) Whenever the Secretary acts to remove a discharge of oil pursuant to this subsection, he is authorized to draw upon money available in the [Deepwater Port Liability Fund established pursuant to subsection (f) of this section.] *Marine Oil Pollution Compensation Fund.* Such money shall be used to pay promptly for all cleanup costs incurred by the Secretary in removing or in minimizing damage caused by such oil discharge.

[(d) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the owner and operator of a vessel shall be jointly and severally liable, without regard to fault, for cleanup costs and for damages that result from a discharge of oil from such vessel within any safety zone, or from a vessel which has received oil from another vessel at a deepwater port while located safety zone, except when such vessel is moored at a deepwater port. Such liability shall not exceed $150 per gross ton or

$20,000,000, whichever is lesser, except that if it can be shown that such discharge was the result of gross negligence or willful misconduct within the privity and knowledge of the owner or operator, such owner and operator shall be jointly and severally liable for the full amount of all cleanup costs and damages.

[(e) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the licensee of a deepwater port shall be liable, without regard to fault, for cleanup costs and damages that result from a discharge of oil from such deepwater port or from a vessel moored at such deepwater port. Such liability shall not exceed $50,000,000, except that if it can be shown that such damage was the result of gross negligence or willful misconduct within the privity and knowledge of the licensee, such licensee shall be liable for the full amount of all cleanup costs and damages.

[(f)(1) There is established a Deepwater Port Liability Fund (hereinafter referred to as the "Fund") as a nonprofit corporate entity which may sue or be sued in its own name. The Fund shall be administered by the Secretary.

[(2) The Fund shall be liable, without regard to fault, for all cleanup costs and all damages in excess of those actually compensated pursuant to subsections (d) and (e) of this section.

[(3) Each licensee shall collect from the owner of any oil loaded or unloaded at the deepwater port operated by such licensee, at the time of loading or unloading, a fee of 2 cents per barrel, except that (A) bunker or fuel oil for the use of any vessel, and (B) oil which was transported through the trans-Alaska pipeline, shall not be subject to such collection. Such colllections shall be delivered to the Fund at such times and in such manner as shall be prescribed by the Secretary. These collections shall cease after the date of enactment of the Deepwater Port Act Amendments of 1984, unless there are adjudicated claims against the Fund to be satisfied. The Secretary may order the collection of the fee to be resumed when the unobligated balance of the Fund as reduced by the unliquidated debts to the United States Treasury is less than $4,000,000. Any collection of fees ordered by the Secretary under the preceding sentence shall cease whenever the unobligated balance of the Fund as reduced by the unliquidated debts to the United States Treasury exceeds $4,000,000. The Fund may borrow from the United States Treasury at an interest rate to be determined by the Secretary of the Treasury amounts sufficient to maintain the available balance in the Fund at $4,000,000, but only to such extent and in such amounts as are provided in advance in appropriation Acts. Such amounts shall remain available until expended. Whenever the money in the Fund is less than the amount the Secretary determines is needed to draw upon under subsection (c)(3) of this section or the claims for cleanup costs and damages for which it is liable under this section, the Fund shall borrow the balance required to pay such claims from the United States Treasury at an interest rate determined by the Secretary of the Treasury. Costs of administration shall be paid from the Fund only after appropriation in an appropriation bill. All sums not needed to draw upon under subsection (c)(3) of this section or for administration and the satisfaction of claims shall be prudently invested in income-producing securities issued by the United States and approved by the Secretary of the Treasury. Income from such securities shall be applied to the principal of the Fund.

[(g) Liability shall not be imposed under subsection (d) or (e) of this section if the owner or operator of a vessel or the licensee can show that the discharge was caused solely by (1) an act of war, or (2) negligence on the part of the Federal Government in establishing and maintaining aids to navigation. In addition, liability with respect to damages claimed by a damaged party shall not be imposed under subsection (d), (e), or (f) of this section if the owner or operator of a vessel, the licensee, or the Fund can show that such damage was caused solely by the negligence of such party.

[(h)(1) In any case where liability is imposed pursuant to subsection (d) of this section, if the discharge was the result of the negligence of the licensee, the owner or operator of a vessel held liable shall be subrogated to the rights of any person entitled to recovery against such licensee.

[(2) In any case where liability is imposed pursuant to subsection (e) of this section, if the discharge was the result of the unseaworthiness of a vessel or the negligence of the owner or operator of such vessel, the licensee shall be subrogated to the rights of any person entitled to recovery against such owner or operator. In that event, the owner and operator of the vessel are jointly and severally liable for cleanup costs and damages resulting from that discharge in the same manner and to the same extent as under subsection (d) of this section.

[(3) Payment of compensation for any damages pursuant to subsection (f)(2) of this section shall be subject to the Fund acquiring by subrogation all rights of the claimant to recover for such damages from any other person. When the Fund under this subsection is subrogated to the right of any person entitled to recovery against the owner or operator of a vessel, that owner and operator are jointly and severally liable for cleanup costs and damages resulting from that discharge in the same manner and to the same extent as under subsection (d) of this section.

[(4) The liabilities established in this section shall in no way affect or limit any rights which the licensee, the owner, or operator of a vessel, or the Fund may have against any third party whose act may in any way have caused or contributed to a discharge of oil.

[(5) In any case where the owner or operator of a vessel or the licensee of a deepwater port from which oil is discharged acts to remove such oil in accordance with subsection (c)(1) of this section, such owner or operator or such licensee shall be entitled to recover from the Fund the reasonable cleanup cost incurred in such removal if he can show that such discharge was caused solely by (A) an act of war or (B) negligence on the part of the Federal Government in establishing and maintaining aids to navigation.

[(i)(1) The Attorney General may act on behalf of any group of damaged citizens he determines would be more adequately represented as a class in recovery of claims under this section. Sums recovered shall be distributed to the members of such group. If, within 90 days after a discharge of oil in violation of this section has occurred, the Attorney General fails to act in accordance with this paragraph, to sue on behalf of a group of persons who may be entitled to compensation pursuant to this section for damages caused by such discharge, any member of such group may maintain a class action to recover such damages on behalf of such group. Failure of the Attorney General to act in accordance with this subsection shall have no bearing on any class action maintained in accordance with this paragraph.

[(2) In any case where the number of members in the class exceeds 1,000, publishing notice of the action in the Federal Register and in local newspapers serving the areas in which the damaged parties reside shall be deemed to fulfill the requirement for public notice established by rule 23(c)(2) of the Federal Rules of Civil Procedure.

[(3) The Secretary may act on behalf of the public as trustee of the natural resources of the marine environment to recover for damages to such resources in accordance with this section. Sums recovered shall be applied to the restoration and rehabilitation of such natural resources by the appropriate agencies of Federal or State government.

[(j)(1) The Secretary shall establish by regulation procedures for the filing and payment of claims for cleanup costs and damages pursuant to this Act.

[(2) No claims for payment of cleanup costs or damages which are filed with the Secretary more than 3 years after the date of this discharge giving rise to such claims shall be considered.

[(3) Appeals from any final determination of the Secretary pursuant to this section shall be filed not later than 30 days after such determination in the United States Court of Appeals of the circuit within which the nearest adjacent coastal State is located.]

[(k)(1) This section shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil from a deepwater port or a vessel within any safety zone.

[(2) Any person who receives compensation for damages pursuant to this section shall be precluded from recovering compensation for the same damages pursuant to any other State or Federal law. Any person who receives compensation for damages pursuant to any other Federal or State law shall be precluded form receiving compensation for the same damages as provided in this section.]

(c) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.

[(l) the Secretary shall require that any owner or operator of a vessel using any deepwater port, or any licensee of a deepwater port, shall carry insurance or give evidence of other financial responsibility in an amount sufficient to meet the liabilities imposed by this section.]

[(m)] *(d)* As used in this section the term—

(1) "cleanup costs" means all actual costs, including but not limited to costs of the Federal Government, of any State or local government, of other nations or of their contractors of subcontractors incurred in the (A) removing or attempting to

remove, or (B) taking other measues to reduce or mitigate damages from, any oil discharged into the marine environment in violation of subsection (a)(1) of this section;

(2) "damages" means all damages (except cleanup costs) suffered by any person, or involving real or personal property, the natural resources of the marine environment, or the coastal environment of any nation, including damages claimed without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or natural resources;

(3) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into the marine environment of quantities of oil determined to be harmful pursuant to regulations issued by the Administrator of the Environmental Protection Agency; and

(4) "owner or operator" means any person owning, operating or chartering by demise, a vessel.

⟦(n)(1) The Attorney General, in cooperation with the Secretary, the Secretary of State, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Council on Environmental Quality, and the Administrative Conference of the United States, is authorized and directed to study methods and procedures for implementing a uniform law providing liability for cleanup costs and damages from oil spills from Outer Continental Shelf operations, deepwater ports, vessels, and other ocean-related sources. The study shall give particular attention to methods of adjudicating and settling claims as rapidly, economically, and equitably as possible.

⟦(2) The Attorney General shall report the results of his study together with any legislative recommendations to the Congress within 6 months after the date of enactment of this Act.⟧

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OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978

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⟦TITLE III—OFFSHORE OIL SPILL POLLUTION FUND

DEFINITIONS

⟦SEC. 301. For the purposes of this title, the term—

⟦(1) "Secretary" means the Secretary of Transportation;

⟦(2) "Fund" means the Offshore Oil Pollution Compensation Fund established under section 302 of this title;

⟦(3) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity;

⟦(4) "incident" means any occurrence or series of related occurences, involving one or more offshore facilities or vessels, or any combination thereof, which causes or poses an imminent threat of oil pollution;

⟦(5) "vessel" means every description of watercraft or other contrivance, whether or not self-propelled, which is operating in the waters above the Outer Continental Shelf (as the term "outer Continental Shelf" is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))), or which is operating in the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301 (a)(2))), and which is transporting oil directly from an offshore facility;

[(6) "public vessel" means a vessel which—

[(A) is owned or chartered by demise, and operated by (i) the United States, (ii) a State or political subdivision thereof, or (iii) a foreign government; and

[(B) is not engaged in commerical service;

[(7) "facility" means a structure, or group of structures (other than a vessel or vessels), used for the purpose of transporting, drilling for, producing, processing, storing, transferring, or otherwise handling oil;

[(8) "offshore facility" includes any oil refinery, drilling structure, oil storage or transfer terminal, or pipeline, or any appurtenance related to any of the foregoing, which is used to drill for, produce, store, handle, transfer, process, or transport oil produced from the Outer Continental Shelf (as the term "outer Continental Shelf" is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))), and is located on the Outer Continental Shelf, except that such term does not include (A) a vessel, or (B) a deepwater port (as the term "deepwater port" is defined in section 3(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502));

[(9) "oil pollution" means—

[(A) the presence of oil either in an unlawful quantity or which has been discharged at an unlawful rate (i) in or on the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 2(a)(2) of the Submerged Lands Act (43 U.S.C. 1301(a)(2))), or on the adjacent shoreline of such a State, or (ii) on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606); or

[(B) the presence of oil in or on the waters of the high seas outside the territorial limits of the United States—

[(i) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); or

[(ii) causing injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States; or

[(C) the presence of oil in or on the territorial sea, navigaable or internal waters, or adjacent shoreline of a foreign country, in a case where damages are recoverable by a foreign claimant under this title;

[(10) "United States claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim under this title;

[(11) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim under this title;

[(12) "United States" includes and "State" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction;

[(13) "Oil" means petroleum, including crude oil or any fraction or residue therefrom;

[(14) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from such incident;

[(15) "damages" means compensation sought pursuant to this title by any person suffering any direct and actual injury proximately caused by the discharge of oil from an offshore facility or vessel, except that such term does not include cleanup costs;

[(16) "person in charge" means the individual immediately responsible for the operation of a vessel or offshore facility;

[(17) "claim" means a demand in writing for a sum certain;

[(18) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

[(19) "owner" means any person holding title to, or in the absence of title, any other indicia of ownership of, a vessel or offshore facility, whether by lease, permit, contract, license, or other form of agreement, or with respect to any offshore facility abandoned without prior approval of the Secretary of the Interior, the person who owned such offshore facility immediately prior to such abandonment, except that such term does not include a person who, without participating in the management of operation of a vessel or offshore facility, holds indicia of ownership primarily to protect his security interest in the vessel or offshore facility;

[(20) "operator" means—

[(A) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel; or

[(B) in the case of an offshore facility, any person, except the owner, who is responsible for the operation of such facility by agreement with the owner;

[(21) "property" means littoral, riparian, or marine property;

[(22) "removal costs" means—

[(A) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, and section 5 of the Intervention on the High Seas Act; and

[(B) cleanup costs, other than the costs described in subparagraph (A);

[(23) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

[(24) "gross ton" means a unit of 100 cubic feet for the purpose of measuring the total unit capacity of a vessel; and

[(25) "barrel" means 42 United States gallons at 60 degrees Fahrenheit.

[FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

[SEC. 302. (a) There is hereby established in the Treasury of the United States on Offshore Oil Pollution Compensation Fund in an amount not to exceed $200,000,000 except that such limitation shall be increased to the extent necessary to permit any moneys recovered or collected which are referred to in subsection (b)(2) of this section to be paid into the Fund. The Fund shall be administered by the Secretary and the Secretary of the Treasury as specified in this title. The Fund may sue and be sued in its own name.

[(b) The Fund shall be composed of—

[(1) all fees collected pursuant to subsection (d) of this section; and

[(2) all other moneys recovered or collected on behalf of the Fund under section 308 or any other provision of this title.

[(c) The Fund shall be immediately available for—

[(1) removal cost described in section 301(22);

[(2) the processing and settlement of claims under section 307 of this title (including the costs of assessing injury to, or destruction of natural resources); and

[(3) subject to such amounts as are provided in appropriation Acts, all administrative and personnel costs of the Federal Government incident to the administration of this title, including, but not limited to, the claims settlement activities and adjudicatory and judicial proceedings, whether or not such costs are recoverable under section 308 of this title.

The Secretary is authorized to promulgate regulations designating the person or persons who may obligate available money in the Fund for such purposes.

[(d)(1) The Secretary shall levy and the Secretary of the Treasury shall collect a fee of not to exceed 3 cents per barrel on oil obtained from the Outer Continental Shelf, which shall be imposed on the owner of the oil when such oil is produced.

[(2) The Secretary of the Treasury, after consulting with the Secretary, may promulgate reasonable regulations relating to the collection of the fees authorized by paragraph (1) of this subsection and, from time to time, the modification thereof. Any modification shall become effective on the date specified in the regulation making such modification, but no earlier than the ninetieth day following the date such regulation is published in the Federal Register. Any modification of the fee shall be designed to insure that the Fund is maintained at a level of not less than $100,000,000 and not more than $200,000,000. No regulation that sets or modifies fees, whether or not in effect, may be stayed by any court pending completion of judicial review of such regulation.

[(3)(A) Any person who fails to collect or pay any fee as required by any regulation promulgated under paragraph (2) of this subsection shall be liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary of the Treasury, in addition to the fee required to be collected or paid and the interest on such fee at the rate such fee would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (e)(2) of this section. Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General may, at the request of the Secretary of the Treasury, bring an action in the name of the Fund against that person for such amount.

[(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

[(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected pursuant to paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United States shall have access to such records and documents for the purpose of audit and examination.

[(e)(1) The Secretary shall determine the level of funding required for immediate access in order to meet potential obligations of the Fund.

[(2) The Secretary of the Treasury may invest any excess in the Fund, above the level determined under paragraph (1) of this subsection, in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the Fund shall be deposited in and credited to the Fund.

[(f) If at any time the moneys available in the Fund are insufficient to meet the obligations of the Fund, the Secretary shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of such notes or other obligations shall be made by the Secretary from moneys in the Fund. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any notes or other obligations issued under this subsection and, for that purpose, he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of such notes or other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

[DAMAGES AND CLAIMANTS

[SEC. 303. (a) Claims for economic loss, arising out of or directly resulting from oil pollution, may be asserted for—

[(1) removal costs; and

[(2) damages, including—

[(A) injury to or destruction of, real or personal property;

[(B) loss of use of real or personal property;

[(C) injury to, or destruction of, natural resources;

[(D) loss of use of natural resources;

[(E) loss of profits or impairment of earning capacity due to injury to, or destruction of, real or personal property or natural resources; and

[(F) loss of tax revenue for a period of one year due to injury to real or personal property.

[(b) A claim authorized by subsection (a) of this section may be asserted—

[(1) under paragraph (1), by any claimant, except that the owner or operator of a vessel or offshore facility involved in an incident may assert such a claim only if he can show—

[(A) that he is entitled to a defense to liability under section 304(c) (1) or 304(c) (2) of this title; or

[(B) if not entitled to such a defense to liability, that he is entitled to a limitation of liability under section 304(b), except that if he is not entitled to such a defense to liability but is entitled to such a limitiation of liability, such claim may be asserted only as to the removal costs incurred in excess of that limitation;

[(2) under paragraphs (2) (A), (B), and (D), and any United States claimant if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

[(3) under paragraph (2) (C), by the President, as trustees for natural resources over which the Federal Government has sovereign rights of exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State, and sums recovered under paragraph (2) (C) shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources;

[(4) under paragraph (2) (E), by any United States claimant if the claimant derives at least 25 per centum of his earnings from activities which utilize the property or natural resource;

[(5) under paragraph (2) (F), by the Federal Government and any State or political sudivision thereof;

[(6) under paragraphs (2) (A) through (E), by a foreign claimant to the same extent that a United States claimant may assert a claim if—

[(A) the oil pollution occurred in or on the territorial sea, navigable waters or internal waters, or adjacent shoreline of a foreign country of which the claimant is a resident;

[(B) the claimant is not otherwise compensated for his loss;

[(C) the oil was discharged from an offshore facility or from a vessel in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C 1331 et seq.); and

[(D) recovery is authorized by a treaty or an executive agrement between the United States and the foreign country involved, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants:

[(7) under paragraph (1) or (2), by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection, when he determines that the claimants would be more adequately represented as a class in asserting their claims.

[(c) If the Attorney General fails to take action under paragraph (7) of subsection (b) within sixty days of the date on which the Secretary designates a source under section 306 of this title, any member of a group described in such paragraph may maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to take action shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

[LIABILITY

[SEC. 304. (a) Subject to the provisions of subsections (b) and (c) of this section, the owner and operator of a vessel other than a public vessel, or of an offshore facility, which is the source of oil pollution, or poses a threat of oil pollution in circumstances which justify the incurrence of the type of costs described in section 301(22) of this title, shall be jointly, severally, and strictly liable for all loss for which a claim may be asserted under section 303 of this title.

[(b) Except when the incident is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator, or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government, the total of the liability under subsection (a) of this section incurred by, or on behalf of, the owner or operator shall be—

[(1) in the case of a vessel, limited to $250,000 or $300 per gross ton, whichever is greater, except when the owner or operator of a vessel fails or refuses to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities; or

[(2) in the case of an offshore facility, the total of removal and cleanup costs, and an amount limited to $35,000,000 for all damages.

[(c) There shall be no liability under subsection (a) of this section—

[(1) if the incident is caused solely by any act of war, hostilities, civil war, or insurrection, or by an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistable character, the effect of which could not have been prevented or avoided by the exercise of due care or foresight; or

[(2) if the incident is caused solely by the negligent or intentional act of the damaged party or any third party (including any government entity).

[(d) Notwithstanding the limitations, exceptions, or defenses of subsection (b) or (c) of this section, all costs of removal incurred by the Federal Government or any State or local official or agency in connection with a discharge of oil from any offshore facility or vessel shall be borne by the owner and operator of the offshore facility or vessel from which the discharge occured.

[(e) The Secretary shall, from time to time, report to Congress on the desirability of adjusting the monetary limitation of liability specified in subsection (b) of this section.

[(f)(1) Subject to the provisions of paragraph (2) of this subsection, the Fund shall be liable, without any limitation, for all losses for which a claim may be asserted under section 303 of this title, to the extent that such losses are not otherwise compensated.

[(2) Except for the removal costs specified in section 301(22), there shall be no liability under paragraph (1) of this subsection—

[(A) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

[(B) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

[(g)(1) In addition to the losses for which claims may be asserted under section 303 of this title, and without regard to the limitation of liability provided in subsection (b) of this section, the owner, operator, or guarantor of an offshore facility or vessel shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim is presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which such owner, operator, or guarantor offers the claimant an amount equal to or greater than the amount finally paid in satisfaction of the claim to the date upon which the claimant accept such amount, inclusive. However, if such owner, operator, or guarantor offers the claimant, within sixty days of the date upon which the claim is presented, or of the date upon which advertising is commenced pursuant to section 306 of this title, whichever is later, an amount equal to or greater than the amount finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer is accepted by the claimant to the date which payment is made to the claimant, inclusive.

[(2) The interest provided in paragraph (1) of this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

[(h) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (a) of this section, or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

[(i) To the extent that they are in conflict or otherwise inconsistent with any other provision of law relating to liability or the limitation thereof, the provisions of this section shall supersede such other provision of law, including section 4283(a) of the Revised Statutes (46 U.S.C. 183(a)).

[FINANCIAL RESPONSIBILITY

[SEC. 305. (a)(1) The owner or operator of any vessel (except a non-self-propelled barge that does not carry oil as fuel or cargo) which uses an offshore facility shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such vessel would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 304(b) of this title. Financial responsibility may be established by any one, or any combination, of the following methods, acceptable to the President: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In any case where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

[(2) The Secretary, in accordance with regulations promulgated by him, shall—

[(A) deny entry to any port or place in the United States or to the navigable waters to; and

[(B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States,

any vessel subject to this subsection which, upon request, does not produce certification furnished by the President that such vessel is in compliance with the financial responsibility provisions of paragraph (1) of this subsection.

[(3) The Secretary, in accordance with regulations promulgated by him, shall have access to all offshore facilities and vessels conducting activities under the Outer Continental Shelf Lands Act, and such facilities and vessels shall, upon request, show certification of financial responsibility.

[(b) The owner or operator of an offshore facility which (1) is used for drilling for, producing, or processing oil, or (2) has the capacity to transport, store, transfer, or otherwise handle more than one thousand barrels of oil at any one time, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such facility would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 304(b) of this title, or $35,000,000, whichever is less.

[(c) Any claim authorized by section 303(a) may be asserted directly against any guarantor providing evidence of financial responsibility for any owner or operastor of an offshore facility or vessel as required under this section. In defending such claim, the guarantor shall be entitled to invoke all rights and defenses which would be available to such owner or operator under this title. Such guarantor shall also be entitled to invoke the defense that the incident was caused by the willful misconduct of such owner or operator, but shall not be entitled to invoke any other defense which such guarantor might be entitled to invoke in proceedings brought by such owner or operator against such guarantor.

[(d) The President shall conduct a study to determine—

> [(1) whether adequate private oil pollution insurance protection is available on reasonable terms and conditions to the owners and operators of vessels, onshore facilities, and offshore facilities; and
>
> [(2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions.

The President shall submit the results of his study, together with his recommendation, within one year after the date of enactment of this title, and shall submit an interim report on his study within three months after such data of enactment.

[NOTIFICATION, DESIGNATION, AND ADVERTISEMENT

[SEC. 306. (a) The person in charge of a vessel or offshore facility which is involved in an incident shall immediately notify the Secretary of the incident as soon as he has knowledge thereof. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against such person or his employer in any criminal case, other than a case involving prosecution for prejury or for giving a false statement.

[(b)(1) When the Secretary receives information pursuant to subsection (a) of this section or otherwise of an incident which involves oil pollution, the Secretary shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of such source and the guarantor of such designation.

[(2) When a source designated under paragraph (1) of this subsection is a vessel or offshore facility and the owner, operator, or guarantor fails to inform the Secretary, within five days after receiving notification of the designation, of his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not made in accordance with this paragraph, the Secretary shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to such owner, operator, or guarantor.

[(c) In a case where—

[(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (b) of this section;

[(2) the source of the discharge was a public vessel; or

[(3) the Secretary is unable to designate the source or sources of the discharge under paragraph (1) of such subsection (b),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Fund.

[(d) Advertisement under subsection (b) of this section shall commence no later than fifteen days after the date of the designation made under such subsection and shall continue for a period of no less than thirty days.

[CLAIMS SETTLEMENT

[SEC. 307. (a) Except as provided in subsection (b) of this section, all claims shall be presented to the owner, operator, or guarantor.

[(b) All claims shall be presented to the Fund—

[(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 306(c) of this title; or

[(2) where the owner or operator may recover under the provisions of section 303(b)(1) of this title.

[(c) In the case of a claim presented in accordance with subsection (a) of this section, and in which—

[(1) the person to whom the claim is presented denies all liability for the claim, for any reason; or

[(2) the claim is not settled by any person by payment to the claimant within sixty days from the date upon which (A) the claim is presented, or (B) advertising is commenced pursuant to section 306(b)(2), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or to present the claim to the Fund, that election to be irrevocable and exclusive.

[(d) In the case of a claim presented in accordance with subsection (a) of this section, where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 304(b) of this title or because the owner, operator, and guarantor to whom the claim is presented are financially incapable of meeting their obligations in full, a claim for uncompensated damages may be presented to the Fund.

[(e) In the case of a claim which is presented to any person, pursuant to subsection (a) of this section, and which is being presented to the Fund, pursuant to subsection (c) or (d) of this section, such person, at the request of the claimant, shall transmit the claim and supporting documents to the Fund. The Secretary may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

[(f) In the case of a claim presented to the Fund, pursuant to subsection (b), (c), or (d) of this section, and in which the Fund—

[(1) denies all liablity for the claim, for any reason; or

[(2) does not settle the claim by payment to the claimant within sixty days after the date upon which (A) the claim is presented to the Fund, or (B) advertising is commenced pursuant to section 306(c) of this title, whichever is later,

the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the Fund pursuant to such subsection (b) may elect to commence an action in court against the Fund in lieu of submission of the dispute to the Secretary for decision, that election to be irrevocable and exclusive.

[(g)(1) The Secretary shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the Fund.

[(2) Except as provided in paragraph (3) of this subsection, the Secretary shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Fund and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) upon a showing by the Secretary that advertising is not reasonably practicable. The Secretary may make advance payments to a contractor for service and facilities, and the Secretary may advance to the contractor funds to be used for the payment of claims. The Secretary may review and audit claim payments made pursuant to this subsection. A payment to a claimant for a single claim in excess of $100,000, or two or more claims aggregating in excess of $200,000, shall be first approved be the Secretary. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted by or on behalf of such State or any of its agencies or subdivisions unless the payment has been approved by the Secretary.

[(3) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Secretary may use Federal personnel to process claims against the Fund.

[(h) Notwithstanding subsection (b) of section 556 of title 5, United States Code, the Secretary is authorized to appoint from time to time for a period of not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Secretary pursuant to subsection (f) of this section. At least one member of each panel shall be qualified to conduct adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the Fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, shall apply to panel members appointed from private life.

[(i)(1) Upon receipt of a request for a decision from a claimant, properly made, the Secretary shall refer the dispute to (A) an administrative law judge appointed under section 3105 of title 5, United States Code, or (B) a panel appointed under subsection (h) of this section.

[(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or if the damage occurred outside any circuit, of the nearest circuit.

[(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding subject to this subsection, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Secretary. If a person fails or refuses to obey a subpena, the Secretary may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

[(4) A hearing conducted under this subsection shall be conducted within the United States judicial district within which, or nearest to which the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or if the damage occurred outside any district, in the nearest district.

[(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with regulations which he may promulgate, may review the decision upon his own initiative or upon exception of the claimant or the Fund.

[(6) Final orders of the Secretary made under this subsection shall be reviewable pursuant to section 702 of title 5, United States Code, in the district courts of the United States.

[(j)(1) In any action brought pursuant to this title against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Fund at the same time such pleadings are served upon the opposing parties.

[(2) The Fund may intervene in any action described in paragraph (1) of this subsection as a matter of right.

[(3) In any action described in paragraph (1) of this subsection to which the Fund is a party, if the owner, operator, or guarantor admits liability under this title, the Fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

[(4) If the Fund receives from either the plaintiff or the defendant notice of an action described in paragraph (1) of this subsection, the Fund shall be bound by any judgment entered therein, whether or not the Fund was a party to the action.

[(5) If neither the plaintiff nor the defendant gives notice of an action described in paragraph (1) of this subsection to the Fund, the limitation of liability otherwise permitted by section 304(b) of this title shall not be available to the defendant, and the plaintiff shall not recover from the Fund any sums not paid by the defendant.

[(k) In any action brought againt the Fund under this title, the plaintiff may join any owner, operator, or guarantor, and the Fund may join any person who is or may be liable to the Fund under any provision of this title.

[(l) No claim may be presented, nor may an action be commenced for economic losses recoverable under this title, unless such claim is presented to, or such action is commenced against, the owner, operator, or guarantor, or the Fund, as to their respective liabilities, within three years after the date of discovery of the economic loss for which a claim may be asserted under section 303(a) of this title, or within six years of the date of the incident which resulted in such loss, whichever is earlier.

[SUBROGATION

[SEC. 308. (a) Any person or governmental entity, including the Fund, who pays compensation to any claimant for an economic loss, compensable under section 303 of this title, shall be subrogated to all rights, claims, and causes of action which such claimant has under this title.

[(b) Upon request of the Secretary, the Attorney General may commence an action, on behalf of the Fund, for the compensation paid by the Fund to any claimant pursuant to this title. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, pursuant to any law, to the compensated claimant or to the Fund, for economic losses for which the compensation was paid.

[(c) In any claim or action by the Fund against any owner, operator, or guarantor, pursuant to the provisions of subsection (a) or (b), the Fund shall recover—

[(1) for a claim presented to the Fund (where there has been a denial of source designation) pursuant to section 307(b)(1) of this title, or (where there has been a denial of liability) pursuant to section 307(c)(1) of this title—

[(A) subject only to the limitation of liability to which the defendant is entitled under section 304(b) of this title, the amount the Fund has paid to the claimant, without reduction;

[(B) interest on such amount, at the rate calculated in accordance with section 304(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the Fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the Fund offers to the claimant the amount finally paid by the Fund to the claimant in satisfaction of the claim against the Fund to the date upon which the claimant accepts that offer, inclusive; and

[(C) all cost incurred by the Fund by reason of the claim, both of the claimant against the Fund and the Fund against the defendant, including, but not limited to, processing costs, investigation costs, court costs, and attorneys' fees; and

[(2) for a claim presented to the Fund pursuant to section 307 (c)(2) of this title—

[(A) in which the amount the Fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

[(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the Fund has paid to the claimant;

[(ii) interest, at the rate calculated in accordance with section 304(g)(2) of this title, for the period specified in paragraph (1)(B) of this subsection; and

[(iii) all costs incurred by the Fund by reason of the claim of the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

[(B) in which the amount the Fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

[(i) the amount which the Fund has paid to the claimant, without reduction;

[(ii) interest, at the rate calculated in accordance with section 304(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this subparagraph, except that if the defendant tenders the offer of the largest amount referred to in this subparagraph within sixty days after the date upon which the claim of the claimant is either presented to the defendant or advertising is commenced pursuant to section 306 of this title, the defendant shall not be liable for interest for that period; and

[(iii) interest from the date upon which the claim of the Fund against the defendant is presented to the defendant to the date upon which the Fund is paid, inclusive, less the period, if any, from the date upon which the defendant offers to the Fund the amount finally paid to the Fund in satisfaction of the claim of the Fund to the date upon which the Fund accepts that offer, inclusive.

[(d) The Fund shall pay over to the claimant that portion of any interest the Fund recovers, pursuant to subsection (c)(1) and (2)(A), for the period from the date upon which the claim of the claimant is presented to the defendant to the date upon which the claimant is paid by the Fund, inclusive, less the period from the date upon which the Fund offers to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant accepts such offer, inclusive.

[(e) The Fund is entitled to recover for all interest and costs specified in subsection (c) of this section without regard to any limitation of liability to which the defendant may otherwise be entitled under this title.

[JURISDICTION AND VENUE

[SEC. 309. (a) The United States district courts shall have original and exclusive jurisdiction of all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

[(b) Venue shall lie in any district wherein the injury complained of ocurred, or wherein the defendant resides, may be found, or has his principal office. For the purpose of this section, the Fund shall reside in the District of Columbia

[RELATIONSHIP TO OTHER LAW

[SEC. 310. (a) Any person who receives compensation for damages or removal costs pursuant to this title shall be precluded from recovering compensation for the same damages or removal costs pursuant to any other State or Federal law. Any person who receives compensation for damages or removal costs pursuant to any other State or Federal law shall be precluded from receiving compensation for the same damages or removal costs under this title.

[(b) No owner or operator of an offshore facility or vessel who establishes and maintains evidence of financial responsibility in accordance with this section shall be required under any State law, rule, or regulation to establish any other evidence of financial responsibility in connection with liability for the discharge of oil from such offshore facility or vessel. Evidence of compliance with the financial responsibility requirement of this section shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the discharge of oil from such offshore facility or vessel.

[(c) Except as otherwise provided in this title, this title shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil resulting in damages or removal costs within the jurisdiction of such State.

[PROHIBITION

[SEC. 311. The discharge of oil from any offshore facility or vessel, in quantities which the President under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1312(b)) determines to be harmful, is prohibited.

[PENALTIES

[SEC. 312. (a)(1) Any person who fails to comply with the requirements of section 305 of this title, the regulations promulgated thereunder, or any denial or detention order, shall be subject to a civil penalty of not to exceed $10,000.

[(2) The civil penalty described in paragraph (1) of this subsection may be assessed and compromised by the President or his designee, in connection with section 305(a)(1) of this title, and by the Secretary, in connection with section 305(a)(3) and section 305(b) of this title. No penalty shall be assessed until notice and an opportunity for hearing on the alleged violation have been given. In determining the amount of the penalty or the amount agreed upon in compromise, the demonstrated good faith of the party shall be taken into consideration.

[(3) At the request of the official assessing a penalty under this subsection, the Attorney General may bring an action in the name of the Fund to collect the penalty assessed.

[(b) Any person in charge who is subject to the jurisdiction of the United States and who fails to give the notification required by section 306(a) of this title shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both.

AUTHORIZATION OF APPROPRIATIONS

[SEC. 313. (a) There is authorized to be appropriated for the administration of this title, $10,000,000 for the fiscal year ending September 30, 1979, $5,000,000 for the fiscal year ending September 30, 1980, and $5,000,000 for the fiscal year ending September 30, 1981.

[(b) There are also authorized to be appropriated to the Fund, from time to time, such amounts as may be necessary to carry out the purposes of the applicable provisions of this title, including the entering into contracts, any disbursements of funds, and the issuance of notes or other obligations pursuant to section 302(f) of this title.

[(c) Notwithstanding any other provision of this title, the authority to make contracts, to make disbursements, to issue notes or other obligations pursuant to section 302(f) of this title, to charge and collect fees pursuant to section 302(d) of this title, or to exercise any other spending authority shall be effective only to the extent provided, without fiscal year limitation, in appropriation Acts enacted after the date of enactment of this title.

[ANNUAL REPORT

[SEC. 314. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress (1) a report on the administration of the Fund during such fiscal year, and (2) his recommendations for such legislative changes as he finds necessary or appropriate to improve the management of the Fund and the administration of the liability provisions of this title.

[EFFECTIVE DATES

[SEC. 315. (a) This section, subsection (e) of section 304, subsection (d) of section 305, and all provisions of this title authorizing the delegation of authority or the promulgation of regulations shall be effective on the date of enactment of this title.

[(b) All other provisions of this title, and rules and regulations promulgated pursuant to such provisions, shall be effective on the one hundred and eightieth day after the the date of enactment of this title.

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ADDITIONAL VIEWS

H.R. 2817, as reported by the Committee on Energy and Commerce, represents a carefully crafted initiative, reached through a bipartisan effort and reflecting a compromise among the various interests concerned with Superfund reauthorization. It is our belief that this initiative would be a significant improvement over current law.

Likewise, the substitute bill ordered reported by our Committee on Public Works and Transportation is the product of a bipartisan effort. In fact, the substitute represented enough of a compromise to allow it to be reported by voice vote.

We recognize the importance of quick action to reauthorize and increase revenues for Superfund, the taxing mechanism for which has already expired. Moreover, we fully appreciate the urgency of prompt action to clean up abandoned and uncontrolled hazardous waste sites across this Nation and the vital role to be played by Superfund resources in that effort.

Therefore, we did not oppose the action taken by the Committee on Public Works and Transportation and supported reporting the bill as the best approach to achieve the objective of Superfund reauthorization.

However, it is our view that, before the bill goes to the Floor, changes are necessary in the version reported by this Committee. In fact, many interested parties, including the Administration, have requested changes.

It is our understanding that the Committee leadership will now enter into meaningful and productive negotiations with the other committees of jurisdiction in order to make these necessary adjustments and arrive at a common vehicle for prompt consideration and passage by the House.

It was with that explicit understanding that we supported the reporting of the Public Works and Transportation version. We believe that a common ground can be found and that a consensus vehicle can be developed representing the best provisions and ideas embodied in the work of all of the committees with Superfund jurisdiction. We stress our firm belief that achievement of this goal is in the best interests of our various committees, the House of Representatives, and all those desirous of a strong and effective national Superfund Program.

If, however, agreement on a common vehicle cannot be reached, we believe that Members must then make their own separate evaluations of the legislation, follow their best judgment, and vote accordingly.

GENE SNYDER.
JOHN B. BREAUX.
JOHN PAUL HAMMERSCHMIDT.
ROBERT A. YOUNG.
BUD SHUSTER.
NICK RAHALL.
NEWT GINGRICH.
TIM VALENTINE.
BOB MCEWEN.
MICHAEL A. ANDREWS.
TOM PETRI.
JIM CHAPMAN.
DON SUNDQUIST.
RON PACKARD.
TOM DELAY.
HELEN DELICH BENTLEY.
JIM LIGHTFOOT.
DAVID S. MONSON.
JOHN G. ROWLAND.

ADDITIONAL VIEWS ON H.R. 2817, SUPERFUND REAUTHORIZATION

We firmly support H.R. 2817, Superfund Reauthorization, as reported unanimously by the Committee on Public Works and Transportation. We commend the Committee leadership on this carefully balanced bill, which is most true to the version which passed the full House last year by an overwhelming margin of 322 to 33. We believe it is our duty to bring this version of the bill to the Floor this year.

In voting for the Public Works version we recognized that it represents a hard-fought compromise, one which is extremely protective of the environment and human health, but which also deals fairly with all sides of the many and complex issues which Superfund entails.

Because it is a balanced bill, and does represent all sides fairly, while most effectively protecting our citizens and the environment from the scourge of hazardous wastes, and because it keeps faith with our Colleagues who voted for a similar bill by the House last year, we oppose any changes which would bring a less balanced bill to the House Floor.

Our signatures below indicate as strongly as we can our determined support for the Public Works Committee version and those who crafted it, and our opposition to any weakening changes.

Bob Edgar.
James L. Oberstar.
Ed Towns.
Norman Y. Mineta.
Jim Moody.
Gus Savage.
Chester G. Atkins.
Joe Kolter.
James Traficant.
Henry J. Nowak.
William O. Lipinski.
Peter J. Visclosky.

ADDITIONAL VIEWS

As the chairman of the Republican Task Force on International Trade, I am deeply concerned about our U.S. trade deficit which could reach $150 billion this year. In fact, just this week I joined many of my Republican colleagues in introducing legislation that addresses the inequities in our current trade laws. I am sure that most of us here today have either sponsored or cosponsored some sort of trade reform legislation. I have no doubts that all of my colleagues here today share my concern with the trade issue.

In this regard, I realize that ultimately the members of the Ways and Means Committee will determine how to finance the Superfund reauthorization. However, I notice that in the subcommittee's substitute to H.R. 2817, we have included the tax provision, title III. Accordingly, I believe that it is appropriate that this committee, for the record, recommend that any new tax adopted by the Ways and Means Committee to finance the Superfund be trade neutral and should not undermine the competitiveness of U.S. exports nor favor imports over domestic industries.

The trade deficit is one of the most serious issues that we in Congress now face. No Superfund tax nor any other legislation should be adopted that does not take into account its trade implications.

DON SUNDQUIST.

ADDITIONAL VIEWS TO SUPERFUND LEGISLATION OF HON. E. CLAY SHAW, JR.

The Superfund reauthorization legislation reported out of the Public Works and Transportation Committee requires that a higher state cleanup standard will be complied with if the state pays for the additional costs. In Subcommittee action, compromise language was inserted that required the state and the Environmental Protection Agency to split the costs 50/50.

When this language was knocked out just before full committee consideration, I had hoped to offer an amendment to this section during markup requiring the federal govenment to pay for 100% of the additional costs associated with the higher state standard. This was not possible.

Many states have special environmental problems that they have recognized through various environmental regulations. In many instances these standards are more stringent than federal standards.

92% of the people in Florida, my home state, rely upon groundwater for its drinking water supplies. Because of this heavy reliance on a limited resource, Florida is the only state with an active sampling program for major contaminants.

Florida implemented a comprehensive groundwater rule in 1983, placing it in the forefront of states' efforts to protect groundwater:

15 other states have groundwater classifications;

19 other states have adopted groundwater quality standards.

Also, Florida is one of the first states to initiate a comprehensive program to assess its underground motor fuel tank population.

I feel quite strongly that, where a state has determined a regulation is necessary to protect the citizens of the state, the federal government should follow suit and pay for the increased costs. Certainly the state should not be required to pay for 100% of the costs.

I hope that when the committees with referral are working on the major differences in the bill this issue can be addressed.

E. Clay Shaw, Jr.

ADDITIONAL VIEWS OF HON. JIM CHAPMAN

I realize that timing is important in bringing this legislation before the Full House for consideration, and I do not want to prolong the debate on this matter. I will not object to passage to the language today, however, I do have some very serious problems with some of the provisions in this substitute.

I am gravely concerned about the future of Texas and how the provisions in this Superfund program will effect my State. Texas currently pays far more than its fair share of the Superfund taxes. In fact, over 70% of the taxes are paid by Texas and Louisiana. Now I don't think this is fair. The Southern States are having to dig deep into their pockets in order to clean up the rest of the country. And now, we are establishing even more taxes with this bill. I don't think that if we do create new taxes, the additional burden will be carried equally by all States. I think that should these taxes go into effect, Texas will end up paying most of them, and I cannot accept that.

Another problem I find with this substitute bill is that while it allows EPA to limit liability of the responsible party, it does not determine how or to what that liability would be limited. The threat of perpetual liability is the very condition that induces responsible parties to reject the notion of settlement and take the chance in court that a judicially determined outcome will provide them better treatment.

Both H.R. 2817 and S. 51 contain language that would allow the Administration, under certain circumstances, to reach a settlement with the responsible party which would be final with regard to the liability for the site in question. I think the potential to obtain such a release from liability is just the inducement that will bring truly responsible parties to the bargaining table.

The Citizen Suits provisions in this substitute bill is also an area in which I have problems. The term "hazardous waste sites" is overly vague. Under the definition of RCRA, with a little creative defining, the term could include a gas station or even a farm. Basically, I agree with the Citizen Suits provision, but I think we need to tighten up the definition so that it will not unreasonably expanded down the road. Expansion of the provisions beyond the parameters in RCRA could lead to a total disruption and dilution of the Superfund program as resources are diverted from the cleanup of priority hazardous waste sites.

In Section 121(a), the substitute bill states that the "Administrator shall select appropriate cost-effective remedial actions to be carried out . . ." But, further on, over on page 116, cost is not mentioned as one of the factors that should be taken into consideration in determining whether or not a solution or remedial action is practicable. If we can get a site 99% cleaned up, and it satisfies EPA clean up standards, then how much is it worth to get the final

1%? Do we spend $1 million to reach a 95% cleanup but then spend another $5 million to try to reach 100%? If we have reached a level where the site will cause no health risks and it is 95% cleaned up, do we stop working on it and start cleaning up another hazardous waste site, or do we instead pump even more money into the first one until the cleanup is 100%. I don't think anybody knows the answer, but I think it is clearly something we have to consider.

One final provision that I have some problems with is Section 116, which establishes The Agency for Toxic Substance and Disease Registry, and in turn gives this agency the duties to perform health research that needs to be carried out. But this section contains no oversight of how much money should be spent on such studies. If we aren't careful, we might lose sight of the proper scope of Superfund which is to insure adequate site cleanup and appropriate emergency response, and instead study ourselves into oblivion. It's important that Superfund resources focus again on the priority hazardous sites and the true emergency needs that we are aware of today. The funds are not limitless. We need to clean up the sites that we know pose a substantial threat to the health of our citizens, then we should tackle new problems which could threaten the public health. Again, I fully support health research. I just think we must be careful in allocating the resources in the Superfund.

Mr. Chairman, I realize that I am the newest member of this Committee, but that fact does not make me unaware of the hard work and diligent efforts my Colleagues have put forth in trying to reach an agreement on the Superfund legislation. I fully understand the controversy surrounding this bill and I would just like to finish up by commending the members of this committee for joining together to reach a compromise so that we can now forge ahead to see that the Superfund will be used for its original purpose and that all existing hazardous waste sites which endanger the public will be cleaned up.

JIM CHAPMAN.

ADDITIONAL VIEWS OF HON. MICHAEL A. ANDREWS

The more we discover about our hazardous waste problems, the more complex and difficult it becomes and the more urgent the need for a Superfund program which emphasizes expeditious cleanups and permanent solutions. H.R. 2817 as reported by the Energy and Commerce Committee is a well-crafted bipartisan compromise which strengthens current law considerably and is informed throughout by a fundamental concern for the public health and environment. Moreover, the bill establishes a clear and consistent policy which puts us on the road toward an effective long-term solution to our hazardous waste problem. As an early cosponsor of the Energy bill, I agree with its policy objectives.

Amendments to H.R. 2817 must be evaluated in light of their internal consistency as well as their effect on the overall policy which H.R. 2817 clearly sets forth. While there are elements of the Public Works and Transportation Committee substitute which I do support, I am conerned that some of its major provisions adversely affect the overall integrity of H.R. 2817.

For example, Section 104(b) of the Committee substitute contains a provision which would prevent potentially responsible parties from conducting remedial investigations or feasibility studies (RI/FS). Aside from the question of whether such exclusion is advisable, this provision is inconsistent with Section 122(a) and 122(e)(2), the settlement section, where the Administrator and potentially responsible parties are explicitly authorized to enter into 104(b) agreements for the conduct of RI/FS where "the Administrator determines that such action will be done properly by such person."

The policy direction in Section 122, is unclear. Paragraph 4 on page 131 establishes conditions which if met by responsible parties at a site would release them from any share of orphan share cleanup costs as well as from future liability in excess of the share set forth in the consent decree. A few lines later, the substitute negates this policy by releasing the Administrator from any obligation of carrying it out.

I believe it is critical that EPA have the discretion and the tools it needs to negotiate effective settlements to a wide range of hazardous waste site situations. For example, current EPA policy allows EPA to reward a responsible party with a complete release from liability if that party comes forward with an attractive settlement offer. I agree with this approach. A complete release from liability represents a valuable bargaining chip for the Administrator in any Superfund settlement negotiation. The Committee substitute promises a "permanent and total" release from liability but does not deliver it, since the release envisioned applies solely to conditions known at the time of the agreement.

Another area where the Committee bill departs from what I believe to be good policy and good management practice is in the section including schedules. It is the business of Congress not the courts to gauge the performance of EPA in setting the pace of the Superfund program. This is best accomplished through strict oversight enforcing statutory but nonbinding targets for remedial action starts, requisite explanations for unmet targets on an annual basis, and annual reports to Congress on RI/FS completions.

In addition, the schedule in the Committee substitute would be wasteful of limited Superfund resources. The amendment requires EPA to perform 891 more RI/FS than cleanup starts. These RI/FS have short shelf lives since they are intended to determine where the contaminants are located, which populations are at risk, and what procedures are required to clean up the site. If the RI/FS is set aside for a period of years, the study must be done again. RI/FS cost about $800,000 on average. That means that $712.8 million could be wasted over five years, enough money to clean up 71 sites costing $10 million each. Further, if EPA is not allowed to contract with private parties for performance of RI/FS, as stated in Section 104(b) of the Committee substitute, the agency will certainly never be able to meet the RI/FS commencement schedule, which at best will be extremely difficult to meet anyway.

MICHAEL A. ANDREWS.

ADDITIONAL VIEWS OF HON. JIM MOODY ON H.R. 2817

On October 10, the House Public Works and Transportation Committee gave unanimous bipartisan approval to a five-year, $10 billion reauthorization of Superfund that will strengthen and expand the Environmental Protection Agency's (EPA's) hazardous waste cleanup program. This bill takes a significant lead in effectively treating our nation's contaminated and abandoned waste sites.

Although I stongly support our committee's efforts and will continue to do so, the federal facilities section, in particular, needs strengthening.

Last year, the House, by voice vote, accepted my federal facilities amendment to the 1984 version of the Superfund reauthorization bill, H.R. 5640. The goals of this amendment were to treat federal hazardous waste sites the same as privately-owned sites and to establish a process to ensure effective compliance by federal sites with the Superfund program. While the federal facilities section of H.R. 2817 is similar in approach and content to the final language in H.R. 5640, there is no enforcement action available to the EPA in negotiating with violating federal agencies.

Considering the extensive non-compliance of federal agencies in the past, it is essential that the EPA have the necessary enforcement authority to make any negotiated agreements with agencies valid and effective. And while it is hoped that a spirit of full cooperation between the EPA and other federal agencies will not require litigation to bring about abatement actions, I consider that the addition of strengthening language would be a safeguard in guaranteeing the cleanup of federal hazardous waste sites, and will work toward its inclusion in the final House Superfund legislation.

Sincerely,

JIM MOODY.

ADDITIONAL VIEWS ON PUBLIC WORKS AND TRANSPORTATION COMMITTEE'S SUBSTITUTE TO H.R. 2817

As reported by the Committee on Public Works and Transportation, H.R. 2817 contains cleanup scheduling provisions which cause me considerable concern. Throughout consideration of the reauthorization of Superfund, my goal has been to develop an effective, efficient program which will result in cleanups that protect the health and welfare of our communities. These cleanups must be as permanent and complete as is possible with the technology we have available to us.

Although I agree that we should set targets for the number of cleanups which the Environmental Protection Agency should begin in each year of the program, I firmly believe that these targets must be sufficiently flexible to allow the Agency to fully understand and carfully address the unique conditions at each site. We still face many unknowns in hazardous waste cleanups, and mandatory schedules that do not allow flexibility may defeat the very goals we are trying to accomplish. If the Agency is required to begin 150 cleanups each year, regardless of the complexity of the problems at sites or the technical information needed or the concerns of the communities, we run the risk of incomplete cleanups based on inadequate data or with less public participation and support.

No provisions Congress mandates can or should take the place of careful oversight by the Committees of jurisdiction and by the Members who represent districts with hazardous waste sites. It is our responsibility to make sure that our communities are protected as completely as possible and that our constituents can return to their normal lives as quickly and with as little disruption as possible. I believe that all of these objectives would be better obtained by more flexible schedules combined with strict oversight. I hope that H.R. 2817 will be improved to include yearly targets for beginning cleanup combined with annual reports to Congress by the Environmental Protection Agency which would include full explanation of any failure to meet the targets. In addition to encouraging cleanups at a steady but realistic pace, such a provision would provide valuable information to the Congress on the evolving needs of the program and allow us to make corrections when they are needed.

ROBERT A. YOUNG.
MICHAEL A. ANDREWS.

DISSENTING VIEWS FOR INCLUSION WITH COMMITTEE REPORT ON H.R. 2817

As members of this Committee we are pleased to be a part of the process to renew our commitment to the Superfund Program. We felt that H.R. 2817 as it was passed by the Committee on Energy and Commerce is a reasonable compromise to this important issue. However, the substitute which the Committee has passed makes changes which are unacceptable. We support a strong but responsible approach to Superfund. In order for this program to be effective the scope and priorities of its responsibilities must be clearly defined. This is one of the major weaknesses of the Committee substitute. The substitute clouds the purpose of the program by:

(1) Diverting Superfund resources to clean up naturally occurring substances. While there are instances where naturally occurring substances are a real problem, Superfund was not intended to deal with it. Superfund was created to clean up orphaned hazardous waste dumps and areas contaminated by the manufacture of hazardous waste by industry. Diverting funds away from that purpose will severely inhibit the program from achieving its intended goal. The Committee substitute also allows Superfund to be used to clean up Federal facilities. This takes the pressure off responsible government agencies to act to clean up sites for which they are responsible.

(2) The Committee substitute eliminates options which the EPA Director has had in determining a solution which is cost efficient. This will require in some cases that the EPA must go back to sites where cleanups have been completed and do further work. In addition, the substitute requires the EPA to apply environmental and water quality standards which may in the end not be the best suited to determine that the site is safe. The language of this section is unclear and ambiguous and will contribute to the inaction that has been a hallmark of the Superfund Program.

(3) The Committee version adopts scheduling requirements that effectively force the EPA to fail. The original version of the bill sets reasonable schedules which allow the EPA to maintain the priority to cleanup the most hazardous sites first. The Committee substitute also prohibits responsible parties from conducting remedial investigations and feasibility studies (RI/FSs) forcing the EPA to conduct all RI/FSs insures that the schedules will not be met.

(4) The inclusion of the provision which allows for a suit against anyone who has or is contributing to the release or threatened release of a pollutant or hazardous substance vastly enlarges the possibilities for law suits which will greatly reduce the number of sites which will get cleaned up by shifting many sites into the authority of the courts. This is a disastrous move which threatens the future viability of the program. The EPA, not the courts, must control the cleanup mechanism.

(5) The Committee substitute includes a provision to require companies to measure and report the level of emissions into the air of a long list of hazardous substances. There are questions regarding the feasiblity of this as it is as yet unknown if it is possible to accurately measure these releases or if the need to do so is genuine. At best, the requirement to measure these releases is premature pending further study of the problem.

(6) The Committee substitute removes the flexibility in granting liability releases the EPA Administrator needs in order to negotiate settlements. This will have the effect of greatly slowing down the process and make it harder to obtain cost recovery from responsible parties.

These items all serve to make the Committee substitute to H.R. 2817 unacceptable because instead of strengthening the program as it is desired to do, they weaken it.

For these reason we do not support the adoption of H.R. 2817 as it has been amended by the Committee on Public Works and Transportation.

Tom DeLay.
David S. Monson.

SUPPLEMENTAL VIEWS OF HON. DEAN A. GALLO

I strongly commend the Committee which, working in a unified, bipartisan manner under the able leadership of Chairman James J. Howard, Subcommittee Chairman Robert A. Roe, and Ranking Republican Members Gene Synder and Arlan Stangeland, has made a major contribution to solving our nation's hazardous waste crisis.

The Committee's proposal for the reauthorization of Superfund is one of the most significant pieces of legislation before the Congress. Swift passage of this measure is critical to the nation as a whole, as well as to my district which has 11 sites on the National Priorities List. We must get on about the business of solving the enormous problems caused by the disposal of toxic wastes.

Our Committee has demonstrated its complete commitment to a thorough and workable Superfund. Together with, among others, the Clean Water Act and the Resource conservation and Recovery Act, our reauthorization of Superfund will do what is needed to clean up the environment. We will be able to provide a cleaner, safer environment for the generations to come. What could be more important?

I am particularly proud that the Committee has included, virtually unchanged, the community right-to-know and emergency planning legislation. I introduced together with Representative Bob Wise. As adopted, the measures enhance community safety and protection because the right information will go to the right people at the right time.

I am certain that each Member of Congress knows of situations in his or her district where the response to a hazardous substance emergency left much to be desired. The prevention of a catastrophe demands local action. Further, it requires people to be flexible, to be innovative and, most important, to get in the habit of cooperating in order to arrive at solutions. The community right-to-know and emergency planning measures endorsed by this Committee will make such cooperation possible.

The Committee bill has my full support. I do believe, however, that the cleanup process would be further enhanced if we structured the payment provisions of Section 121, Cleanup Standards, so as to encourage the application of State environmental standards and permitting requirements to Superfund response actions.

Congress structured the original Superfund to foster a program of cooperation between the Federal and the State governments. Where State standards exceed Federal standards, the State is responding to local conditions and needs. Thus, deference should be paid to that State's greater knowledge, and compliance with Superfund should not authorize non-compliance with other environmental programs.

Again, I commend the Committee for its production of this strong, workable Superfund reauthorization package and I am proud to have been a participant in the process.

DEAN A. GALLO.

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